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ABSTRACT

This handbook was prepared to ensure that, as required by section 626.1 of the California Penal Code in 1984, "students, parents, and all school officials and employees have access to a concise, easily understandable summary of California penal and civil law pertaining to crimes committed against persons or property on school grounds." The handbook is intended to be used in conjunction with the Standard School Crime Reporting Form. The first of the handbook's three chapters explains why school crimes should be reported, what 10 types of crimes should be reported, and who should be involved in resolving the problems of school crime. Chapter 2 provides a reference guide to 19 types of criminal conduct within three broad categories: crimes against persons, crimes against property, and crimes that disrupt campus order. The discussion of each type of crime covers the legal definitions of the activities and the penalties that may be imposed for participation in them. The third chapter presents recommended and required procedures for dealing with these crimes. The laws concerning the specific responsibilities of personnel, proper procedures for detaining or arresting criminals, proper procedures for disciplining students and employees, and criminal liability are reviewed. (PGD)

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School Crime HANDBOOK

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Summary of California Penal and Civil Laws Pertaining to Crimes Committed Against Persons or Property on School Grounds

EA 019 135

Office of the Attorney General • State Department of Education
State of California, 1986

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School Crime
HANDBOOK

Prepared by
Office of the Attorney General
In cooperation with
State Department of Education

Legal Requirements for Publishing

Penal Code Section 626.1 requires the Attorney General's Office to prepare and present to the Superintendent of Public Instruction a report that contains a summary of California penal and civil laws pertaining to crimes committed against persons or property on school grounds. The Superintendent of Public Instruction is required to provide for the duplication and distribution of the report to all superintendents of school districts and request the superintendents to ensure that a copy of the report is posted and available on request at every school site in each district, including an explanation of the report with a notice of its availability in the next regular communication sent by the school to each parent or guardian.

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INTRODUCTION

This handbook is the product of a 1984 mandate by the California Legislature to ensure that "students, parents, and all school officials and employees have access to a concise, easily understandable summary of California penal and civil law pertaining to crimes committed against persons or property on school grounds." (Pen. Code, § 626.1, subd. (a).) As such, it includes the following information:

> *"[A]ll reporting requirements pertaining to these crimes, the sanctions for failure to report, an explanation as to what constitutes an act of violence or vandalism, an explanation of the procedure by which any person or the school may initiate the prosecution of offenders for these crimes or seek recovery for injury or damages for these crimes, an explanation of parental liability for injury or property damages resulting from the intentional acts of a minor, and an explanation of any right to benefits as a consequence of injury or damage resulting from these crimes."* (Pen. Code, § 626.1, subd. (b).)

Both this handbook and the "Standard School Crime Reporting Form" developed by the State Department of Education in partnership with the Department of Justice, pursuant to the Legislature's instructions in Penal Code Section 628.1, comprise the recently created Standard School Crime Reporting Program. If used together, these two products will help educational personnel and officials to understand:

- Why it is important to report school crime;
- What is required to be reported; and
- Who is involved with the problems of reporting and dealing with school crime.

For maximum utilization, it is important to realize that this handbook is organized differently from the reporting form. While the form lists ten specific crime categories--assault, assault with a deadly weapon, homicide, sex offenses, robbery, extortion, substance/chemical/alcohol abuse, possession of weapons, property crimes, and other crimes--this handbook is organized into three major categories into which certain criminal actions fall:

- Crimes Against Persons
- Crimes Against Property
- Crimes That Disrupt Campus Order

For instance, reporting form items 1-8 are included in the second chapter, ***Crimes on School Campuses***, in subsection A which is entitled, "Crimes Against Persons." Subsection B encompasses "Crimes Against Property," which includes those property crimes listed on the reporting form. Subsection C includes a category not explicitly listed on the form, but one which could be added to the "Other" column, i.e, "Crimes That Disrupt Campus Order."

Also included is an entire section the form does not address--what California law says about responding to school crime and violence. In other words,

once the action occurs, what steps must or may educational personnel then pursue? Chapter III, ***Taking Action Against School Crime***, analyzes relevant statutes in four distinct areas:

- Criminal Procedures
- Student Disciplinary Procedures
- School Employee Disciplinary Procedures
- Liability

Finally, an opening chapter is included that explains the who, what, and why of school crime reporting: who is involved in the reporting process, as well as school crime intervention requirements; what must be reported; and why it is important to report school crime in a standardized manner.

The outline below clarifies the contents of all three chapters.

CHAPTER I: REPORTING SCHOOL CRIME: WHO, WHAT, AND WHY?

A. Why Should the Educational Community Report School Crime?

B. What Is to Be Reported?

C. Who Is Involved With the Problems Caused by School Crime?

CHAPTER II: CRIMES ON SCHOOL CAMPUSES

A. Crimes Against Persons

1. Assault
2. Battery
3. Weapons
4. Robbery
5. Extortion
6. Child Abuse
7. Sexual Abuse
8. Substance Abuse
9. Hazing
10. Miscellaneous Crimes Against Persons

B. Crimes Against Property

1. Vandalism
2. Arson
3. Burglary and Theft
4. Bomb Threats
5. Miscellaneous Crimes Against Property

C. Crimes That Disrupt Campus Order

1. Trespassing and Outsiders
2. Disturbing the Peace
3. Riot, Rout and Unlawful Assembly
4. Loitering

CHAPTER III: TAKING ACTION AGAINST SCHOOL CRIME

A. Criminal Procedures

1. Arrest
2. Notifying Appropriate Authorities of School and Legal Actions
3. Reporting to Child Protective Agency of Child Abuse
4. Search and Seizure

B. Student Disciplinary Procedures

1. Detention
2. Suspension
3. Expulsion
4. Exclusion
5. Corporal Punishment
6. Opportunity Schools
7. Community Schools
8. Student Records

C. School Employee Disciplinary Procedures

1. Pre-Hiring and Credentialing Procedures
2. Disciplinary Procedures

D. Liability

1. District Liability
2. School Employee Liability
3. Parent and Guardian Liability
4. Student Liability

The statutes explained in this handbook include the relevant California laws pertaining to the above-listed school crimes. They were gathered and selected from the following California codes:

- **Business and Professions Code** (Bus. & Prof. Code)
- **California Administrative Code** (Cal. Admin. Code)
- **Civil Code** (Civ. Code)
- **Education Code** (Ed. Code)
- **Government Code** (Gov. Code)
- **Harbors and Navigation Code** (Harb. & Nav. Code)
- **Health and Safety Code** (Health & Saf. Code)
- **Insurance Code** (Ins. Code)
- **Penal Code** (Pen. Code)
- **Vehicle Code** (Veh. Code)
- **Welfare and Institutions Code** (Welf. & Inst. Code)

When using this handbook, it is important to keep several things in mind:

- Because some code references include material not directly or indirectly related to the schools, only those pertinent portions are summarized herein.

- "School or educational personnel" refers to all persons who work directly and on a regular basis with students, including teachers, administrators, student service employees, paraprofessionals, and volunteers.

- "Schools" include any elementary school, junior high school, four-year high school, senior high school, any type of adult school, opportunity school, continuation high school, regional occupational center, evening high school, or technical school.

- "School officials" include all persons officially associated with but not employed by the school district, such as governing board members.

By using the handbook to assist with the "Standard School Crime Reporting Form," educational personnel will quickly learn what and how to report. Thus, as the Legislature intended, it will be only a matter of time before California policy makers and educators have an accurate measurement of the amount and type of statewide school crime. Such data, collected and analyzed on an annual basis, will then form the foundation for future school crime prevention and intervention programs.

I. REPORTING SCHOOL CRIME: WHO, WHAT, AND WHY?

Introduction

Over the past two and a half decades school crime has become a major problem. Between 1960 and 1975, the nation as a whole witnessed an unprecedented increase in the total number of unlawful acts committed by youths. Concurrently, juvenile arrests for violent crimes increased 293 percent.[1] As this spurt of serious juvenile crime spilled over into public schools, the United States government took an active interest in the causes of and possible solutions to this growing national problem.

Congress initiated federal involvement by passing the Education Amendments of 1974 which, in part, directed the United States Department of Health, Education and Welfare (now the Department of Health and Human Services) to conduct a national survey of the nation's school crime and violence problems. The final report, ***Violent Schools--Safe Schools***, was published in 1977 and represented the first effort in the nation to collect school crime data.[2] Among its findings were the following statistics:

- 6,700 of the nation's public schools had a serious problem with crime;
- one-fourth of all schools in the country were vandalized and 10 percent were burglarized in any given month;
- about 2.4 million secondary school students had something stolen, and about 282,000 students reported being attacked in a typical month;
- 120,000 secondary school teachers had something stolen at school during a typical month; 6,000 had something taken by force, either through the use of weapons or threats; 5,200 were physically attacked, about 1,000 of whom were injured seriously enough to require medical attention;

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[1]Paul A. Strasburg, ***Violent Delinquents: A Report to the Ford Foundation From the Vera Institute of Justice*** (New York: Monarch, 1978).

[2]National Institute of Education, ***Violent Schools--Safe Schools: The Safe School Study Report to the Congress*** (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1977). The report surveyed 31,373 public school students and 23,895 public school teachers about their experiences as victims in a variety of criminal acts during the 1975-1976 school year in 642 junior and senior high schools. In addition, questionnaires were administered to 4,014 school principals who were asked for their general impressions about the seriousness of the problems of vandalism, personal attacks and thefts during the 1975-1976 school year. Finally, intensive field studies were conducted in 10 schools to obtain qualitative clues for understanding school crime.

- the risk of violence to teenagers was greater in school than elsewhere; while they spent 25 percent of their waking hours in school, 40 percent of the robberies and 36 percent of the assaults on urban students occurred in schools;

- 525,000 attacks, shakedowns or robberies occurred against students in public secondary schools during one month--almost 22 times as many as were officially recorded by school administrators;

- an average of 21 percent of all secondary students stated they avoided restrooms and were afraid of being hurt or bothered at school; 800,000 students reported staying home from school because they were afraid;

- 12 percent of the teachers hesitated to confront misbehaving students because of fear, and almost 50 percent had been subjected to verbal abuse; and

- minority group students are far more likely to be victims of crime than are white students; Indian, Asian, Hispanic and Black youths suffer two or three times as many serious attacks at school as white students; Indian and Hispanic students are robbed twice as often as white students; Black students are robbed three times as often as white students.

But the *Safe Schools Study* left as many questions unanswered as it had actually answered--In what parts of the nation was such crime worse? What efforts were being made to document and address school crime? Had any states or localities adopted standarized school crime reporting systems? Had any states or localities utilized prevention or intervention strategies that successfully dealt with the school crime problem?

Emerging from this barrage of questions was an interest in gaining more exact information about the nature and extent of school crime on a statewide basis. California was one of the nation's first states to recognize this reporting need. In the early 1970s, the California Legislature passed a law permitting county boards of education to establish a "uniform reporting system" for campus crime, violence, and disruption. (Ed. Code, § 1110.) Since that time, California has maintained a leadership role in an endeavor not only to standardize reporting procedures, but to educate school personnel about the importance of reporting school crime.

This chapter clarifies California's leadership role in the evolution of school crime reporting by asking and answering three important questions:

- Why should the educational community report school crime?
- What is to be reported?
- Who is involved with the problems caused by school crime?

A. Why Should the Educational Community Report School Crime?

California school crime reporting laws became quite sophisticated between 1976 and 1984. Beginning with the notion of volunteer reporting by county boards of education in 1976, the Legislature eventually enacted mandatory statewide reporting procedures in 1984. The following legislative summary demonstrates that during this eight-year period, our state policy makers believed effective reporting techniques measuring and assessing both the school and district's particular crime problems would lead to the development of successful programs to combat campus crime.

In 1979, the Legislature acknowledged the "need for the gathering of data and information relating to the complex problems of school-related crime and violence . . . ." Furthermore, the Legislature mandated "that such data and information . . . be gathered by affected agencies." (Ed. Code, § 32230.)[3] It then directed the State Department of Education to "request" each school district's governing board "to report twice a year to the county superintendent of schools the information needed . . . for completion of the forms relating to school crime and violence." (Ed. Code, § 32231.)[3] The Department of Education was required to prepare and supply reporting forms to collect the following information:

- the techniques utilized to combat crime and violence on school campuses;
- the nature, extent, cost, and effectiveness of prevention and control programs;
- crime incidents and cost information, including frequency of incidents, types of incidents, unit cost of incidents, and total cost of incidents;
- victimization-incident descriptions;
- the modus operandi and number of offenders; and
- the school status of offenders. (Ed. Code, § 32231.)[3]

It was the Department of Education's further responsibility to annually prepare and publish a statewide report on public school crime and violence based upon the collected data. (Ed. Code, § 32232.)[3] Prior to 1984, such reports were based upon ***requested*** rather than ***required*** district reporting; a district could choose not to participate in the data-gathering effort.

---

[3]Ed. Code, §§ 32230 to 32233 were repealed effective January 1, 1982.

In June 1982, California voters passed "The Victims' Bill of Rights" initiative (Proposition 8) stating, in part, that public school students and employees have an inalienable right to attend school on campuses that are safe, secure, and peaceful (Cal. Const., art. I, § 28, subd. (c).) Thus armed with the support of their constituents, California legislators enacted specific procedures to promote such safety and security by requiring that "schools, school districts, local government, and the Legislature have sufficient data and information about the type and frequency of crime occurring on school campuses to permit development of effective programs and techniques to combat crime on school campuses." (Pen. Code, § 628.)

The Legislature then directed the State Department of Education (SDE) to work in partnership with the Department of Justice and selected school districts already compiling school crime statistics to develop a standard crime reporting form for mandatory use in all California school districts by 1985. (Pen. Code, § 628.1.) SDE was required to compile the school data and distribute it, upon request, as follows: to each county superintendent of schools and each county probation department, a summary of that county's district reports and the summary of statewide aggregated data; and to the Legislature, an annual summary of statewide aggregated data. Commencing with the second annual report, SDE was mandated to evaluate school district crime prevention programs. (Pen. Code, § 628.2.)

To facilitate the new mandatory reporting system, the Legislature instructed the California Attorney General to prepare and present to the State Superintendent of Public Instruction a report, with statutory citations, of California laws pertaining to crimes committed against persons or property on school grounds. The Superintendent of Public Instruction was directed to duplicate and distribute the report to all district superintendents, who are required to post a copy at every school in the district, and include an explanation of the report and notice of its availability in the first regular school communication sent to each parent and guardian. (Pen. Code, § 626.1.)

This handbook is the result of the most recent legislative mandate. It is the second part of the Standard School Crime Reporting Program that strives to create a statewide uniform crime reporting system. As stated in the program's "Implementation Guidelines," school crime reporting must be standardized for several reasons:

1. Standardized reporting procedures allow districts to analyze crime problems on their school campuses and to direct appropriate resources to schools to eliminate the incidence of school crime.

2. If some schools underreport their incidence of school crime and others overreport, unfair or inaccurate comparisons are made among schools or districts.

3. When accurate information on school crime is available, state, county, and local government agencies can develop or revise strategies that are interventive and preventive in nature.

4. The Legislature needs complete and accurate information on school crime before it will enact legislation to assist schools and communities in developing strategies for reducing the incidence of school crime.

5. When school crime occurs, its incidence is public information. If the public is to support and assist schools in implementing school safety activities, the information presented must be accurate and credible.

Knowing the importance of reporting school crime is the first step in the reporting process. What ***must*** be reported is the next crucial step.

B. What Is to Be Reported?

Compliance with California's new school crime reporting legislation requires a clear understanding of the crimes that ***must*** be reported. This report is designed to help educational personnel and officials gain such understanding. First, it explains how California laws define school crimes and violence, prescribes mandatory and recommended responses to criminal activity, and specifies penalties for the commission of certain actions. Second, by translating how California statutes define certain crimes, the report will help educational personnel and officials learn how to properly report criminal actions and complete the "Standard School Crime Reporting Form."

According to California law, schools must fill out the forms during each of two reporting periods: July 1--December 31 and January 1--June 30. (Pen. Code, § 628.2.) Crimes to be reported on the form are:

1. **Assault/Attack/Menace**

    a. Against students
    b. Against employees
    c. Against others

2. **Assault/Attack With a Deadly Weapon**

    a. Against students
    b. Against employees
    c. Against others

3. **Homicide**

4. **Sex Offenses**

    a. Misdemeanors (e.g., indecent exposure, obscene phone call)
    b. Felonies (e.g., rape, sodomy, child molestation)

5. **Robbery**

6. **Extortion**

7. **Substance/Chemical/Alcohol Abuse (possession, use, or sale)**

8. **Possession of Weapons**

    a. Guns
    b. Knives
    c. Bombs/explosives/firecrackers
    d. Other

9. **Property crimes**

   a. Arson
   b. Burglary (breaking and entering with intent to steal)
   c. Theft from students (unlawful taking of property)
   d. Theft from school
   e. Vandalism
   f. Other

10. **Other**

    By using the statutory summaries included herein, school personnel will have a better understanding of what legally constitutes such crimes, as well as what their intervention and reporting responsibilities are. Thus, this handbook should be used to supplement the "Standard School Crime Reporting Form."

C. Who Is Involved With the Problems Caused by School Crime?

It has become increasingly clear that school employees cannot and, indeed, should not handle campus crime without law enforcement assistance. Perhaps just as important is the recent recognition that teaching students about their legal rights and responsibilities is more effective when cooperatively taught by educational ***and*** law enforcement specialists. Because educational personnel are not trained to deal with criminal actions or the criminals themselves, nor are they often well-versed about the law, working with law enforcement specialists is well-advised.

In California, such collaboration often involves the creation of some type of school security program. Schools or districts considering such an arrangement have four general options from which to choose: local law enforcement, contract law enforcement, school security departments, or live-in security personnel.

- ***Local Law Enforcement***--Many school districts arrange a formal agreement or memo of understanding between themselves and their local law enforcement agency. Such agreements provide for traditional security duties, formal procedures if a crime occurs and, sometimes, counseling and other educational tasks.

- ***Contract Security Personnel***--The most popular school security presence has been the "rent-a-cop" who monitors school-sponsored sporting activities and dances. Generally, schools hire a guard company to provide specific services when needed. Thus, contract security forces are not permanent school personnel with on-going functions.

- ***Live-in Security Personnel***--Some school districts hire nonsworn, live-in security personnel to provide a continual, on-campus deterrent to school crime. One of the most popular approaches is the live-in trailer program whereby a security guard lives in a trailer placed on school grounds. The alarm system may be directed to the trailer after school hours, giving the live-in security personnel the responsibility to call local police.

- ***School Security Departments***--Many inner-city and large urban school districts have opted to hire full-time, professional security departments. Rather than depending totally on local police or hiring security personnel on a live-in or as-needed basis, these districts have created their own security departments.

California law is very specific about creating, organizing, and utilizing such school security departments on any elementary or secondary school campus. Any school district's governing board may decide to establish either a school security department supervised by a chief of security, or a school police department supervised by a chief of police. The district superintendent is authorized to direct such a department and employee "personnel as may be necessary

to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district." (Ed. Code, § 39670.) Monies may be transferred into any school district's general fund to train school police personnel pursuant to the requirements or approval of the Commission on Peace Officer Standards and Training or to provide other public safety skills training in first aid, rescue, cardiopulmonary resuscitation, emergency medical techniques, juvenile procedures, and the use of specialized safety equipment. (Ed. Code, § 39671.5.)

While neither school district police nor security personnel have general police powers, district police department members are peace officers while engaged in the performance of their duties. Such duties may be performed on district-owned, operated or administered property or in any other area within the district's political subdivision, as specified by the superintendent of schools. In addition, these officers have the authority of peace officers anywhere in the state when an offense has been committed or when there is probable cause to believe an offense has been committed against persons or property which the officer has the duty to protect, or when making an arrest pursuant to Penal Code section 836 for any public offense which involves an immediate danger to person or property or to prevent the escape of the perpetrator of such an offense. (Ed. Code, §§ 39670-39671; Pen. Code, §§ 830.4, 830.4, subd. (g).)

II. CRIMES ON SCHOOL CAMPUSES

Introduction

In a March 1984 survey conducted by the California School Employees Association, 36 percent of the respondents reported that they had been physically attacked at school and 46 percent reported that they feared for their safety while on the job.[4]

Combatting both the incidence of school crime and the fear that accompanies the actual or threatened commission of any criminal offense has become a priority for the California Legislature, the Attorney General's Office, and the State Department of Education. These public agencies have designed and passed legislation that will help make California's schools safe and secure learning environments.

The resulting legislation, most of which has been enacted and put into effect throughout the past five years, aims to decrease the incidence of, as well as punish the perpetrators of, three specific categories of crimes committed in California schools: crimes against persons, crimes against property, and crimes that disrupt campus order. This section provides an easy-to-read, quick reference guide. Its organization is simple--the three crime categories and the crimes within each are discussed. For each crime, two questions are considered: How does California law specifically define each crime? What penalties are imposed for such crimes? Recommended and required procedures for dealing with the specific crimes are discussed in chapter III.

When using this legal summary, it is important to recognize the difference between a ***criminal action*** that warrants official school and/or law enforcement intervention, and an act of ***school misconduct*** that is not necessarily a criminal infraction, but does require official school intervention. School misconduct includes student activities determined unacceptable by school and/or district administrators including incorrigibility, obscenity, verbal abuse, disobedience, smoking, fighting, immorality, lying, cheating, and protesting. While some of these actions are also violations of California law, most do not constitute criminal action and, therefore, do not require law enforcement intervention.

The following outline provides an overview of the categories and specific crimes covered in this section:

Crimes Against Persons

- Assault
- Battery
- Weapons

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[4]California School Employee Association, *Bulletin* (May 1984).

- Robbery
- Extortion
- Child Abuse
- Sexual Abuse
- Substance Abuse
- Hazing
- Miscellaneous Crimes Against Persons

Crimes Against Property

- Vandalism
- Arson
- Burglary and Theft
- Bomb Threats
- Miscellaneous Crimes Against Property

Crimes That Disrupt Campus Order

- Trespassing and Outsiders
- Disturbing the Peace
- Riot, Rout and Unlawful Assembly
- Loitering

A. Crimes Against Persons

Crimes against persons are perhaps the most disturbing type of criminal activity occurring on our campuses today. That is why a thorough understanding of what constitutes such crimes and how educational personnel are required to respond is essential to the goal of providing safer school environments.

Crimes against persons are easily defined as those activities identified in the California statutes and through local ordinances as illegal offenses committed against persons which include assault, battery, willful misconduct, unlawful fighting, teacher insult or abuse, threats, hazing, substance abuse, child abuse, robbery, weapons, extortion, and sex offenses.

1. Assault
(Crime Reporting Form,[5] #1 and #2)

In the State of California, an assault is an "unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." (Pen. Code, § 240.) As such, an actual injury does **not** need to occur; merely an **attempt** to commit a violent action constitutes an assault.

An assault with a deadly weapon includes assaults with firearms or by any means of force likely to produce great bodily injury, i.e., knives and other cutting instruments, clubs, bricks, bicycle chains, nunchakus, bottles, explosives, fire, acid, and bodily parts (such as hands, feet, and fists). These terms will be examined in more detail in the weapons section of this chapter.

For educational personnel, it is particularly important to distinguish between an assault (the attempt to commit a violent act upon another person) from a fight (which involves the mutual participation of all parties). Making such distinctions is especially important for today's school employees who must deal with a set of laws which defines employee, school district, and pupil liability for criminal actions committed on campus. These liability statutes are analyzed in Section III-C of this handbook.

a. Assault Committed on School Property
(Crime Reporting Form, #1 and #2)

It is a misdemeanor to commit an assault against a person on school property. (Pen. Code, § 241.2.)

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[5]"Crime Reporting Form," where used in this chapter, refers to the "Standard School Crime Reporting Form" (Form SSCR-85) for school-site reports. (School districts will report on Form DSCR-85.)

b. **Assault Against School Police Officer**
(Crime Reporting Form, #1b)

It is either a misdemeanor or felony to commit an assault against a school police officer when the officer is performing his or her duties and the person who commits the assault knows or reasonably should know that the victim is a peace officer performing his or her duties. (Pen. Code, § 241.4.)

c. **Assault With a Deadly Weapon**
(Crime Reporting Form, #2)

It is either a misdemeanor or felony to commit an assault upon another person with a deadly weapon or instrument (other than a firearm) or by any other means of force likely to produce great bodily injury. (Pen. Code, § 245.)

2. **Battery**
(Crime Reporting Form, #1 and #2)

All too often, the crimes of assault and battery are confused and used interchangeably. However, they are very different crimes involving different actions. The State of California defines battery as a **"willful and unlawful use of force or violence upon the person of another."** (Pen. Code, § 242.) As such, battery requires an actual contact rather than the attempted contact sufficient for an assault. The action must also be intentional and illegal to constitute battery. The following discussion about battery includes laws that refer to "attacks," "willful misconduct," and "willful actions" that occur on school grounds.

The California Penal Code specifically defines an injury as well as a serious bodily injury:

- ***injury***--a physical injury requiring professional medical treatment (Pen. Code, § 243, subd. (e)(6));

- ***serious bodily injury***--a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement (Pen. Code, § 243, subd. (e)(5)).

a. **Battery Committed on School Property**
(Crime Reporting Form, #1 and #2)

It is a misdemeanor to commit a battery against a person on school property. (Pen. Code, § 243.2.)

b. **Battery Committed Against School Bus Driver**
(Crime Reporting Form, #1 and #2b)

It is a misdemeanor to commit a battery against a school bus driver when the person committing the act knows or reasonably should know that the victim is performing his or her duties and the victim is actually performing such duties. If the victim suffers an injury, the offense is either a misdemeanor or felony. (Pen. Code, § 243.3.)

c. **Placement or Throwing of Caustic Chemical**
(Crime Reporting Form, #1)

It is a felony to intentionally and maliciously throw, place, or cause to be thrown or placed, a vitriol, corrosive acid, or caustic chemical upon another person with the intent of injuring the flesh or disfiguring the body of that person. (Pen. Code, § 244.)

d. **Release of Injurious or Offensive Substances**
(Crime Reporting Form, #1)

It is a misdemeanor to attempt to or actually throw, drop, pour, deposit, release, discharge, or expose in, upon or about a public place where people are assembled an injurious or offensive substance.

It is a felony to willfully use in a place of public assemblage a liquid, gaseous, or solid substance capable of producing serious illness or permanent injury when disbursed through the air, or tear gas, mustard gas, acids, or explosives. (Pen. Code, § 375.)

e. **Intentional Injury of Others**
(Crime Reporting Form, #1)

It is a misdemeanor to intentionally and wrongfully commit an act that seriously injures the person or property of another. (Pen. Code, § 650½.)

f. **Sexual Battery**
(Crime Reporting Form, #4)

It is either a misdemeanor or felony for a person to touch an intimate part of another person while the person is unlawfully restrained and the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse. (Pen. Code, § 243.4.)

3. **Weapons**
(Crime Reporting Form, #8)

Every school employee knows that carrying, concealing, or using weapons on school grounds are criminal offenses in the State of California. Not as well known is what constitutes a weapon. Traditionally, weapons appearing on school grounds were guns and knives. During the 1960s and 1970s, however, the list of weapons expanded to include razors and razor blades, clubs of all shapes and sizes, metal knuckles, a wide array of hair grooming instruments, home-made plastic devices, and nunchakus.

Recognizing the use of a new array of weapons, the California Legislature has passed legislation which includes as "injurious objects" that are unlawful to possess, conceal or use on school grounds those "capable of inflicting substantial bodily damage, not necessary for the academic purpose of the pupil." (Ed. Code, § 49330.) Thus, an injurious object would ***not*** include an object needed for a school-sponsored activity or classroom instruction, or an item of apparel which a child reasonably may be expected to wear or possess. (Ed. Code, § 49330.)

Some illegal injurious objects are defined as follows:

- ***Pistol, revolver, and firearm capable of being concealed upon the person***--a device designed to be used as a weapon which expels a projectile by the force of combustion and has a barrel less than 12 inches long. (Pen. Code, § 12001, subd. (a).)

- ***Rocket and rocket propelled projectile launcher***--a device containing explosive or incendiary material, whether or not it is designed for emergency purposes. (Pen. Code, § 12001, subd. (c).)

- ***Sawed-off shotgun***--a firearm (including any revolver) that is manufactured, designed, or converted to fire shotgun ammunition having a barrel or barrels less than 18 inches long; a rifle having a barrel or barrels less than 16 inches long; or a weapon made from a rifle or shotgun that has a modified overall length less than 26 inches. (Pen. Code, § 12020, subd. (d)(1).)

- ***Nunchaku***--an instrument consisting of two or more sticks, clubs, bars, or rods that are used as handles and are connected by cord, rope, wire, or chain for use as a weapon of self-defense. (Pen. Code, § 12020, subd. (d)(2).)

- ***Wallet gun***--a firearm that is mounted or enclosed in a case resembling a wallet, designed to be or capable of being carried in a pocket or purse, and capable of being fired while mounted or enclosed in such a case. (Pen. Code, § 12020, subd. (d)(3).)

- ***Cane gun***--a firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device capable of being fired while mounted or enclosed that is designed to be or is capable of being used as a walking aid. (Pen. Code, § 12020, subd. (d)(4).)

- ***Flechette dart***--a dart, capable of being fired from a firearm, that measures approximately one inch long and has tail fins that comprise five-sixteenths of an inch of the body. (Pen. Code, § 12020, subd. (d)(5).)

- ***Metal knuckles***--an instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact. (Pen. Code, § 12020, subd. (d)(6).)

- ***Switch-blade knife***--a knife that looks like a pocket knife, but includes a spring-blade knife, snap-blade knife, gravity knife, or similar type of knife. The blade or blades of such a knife are two or more inches long and can be released by flicking a button, pressing the handle or flipping the wrist, or by the weight of the blade, or by any other type of mechanism. (Pen. Code, § 653k.)

Additionally, Penal Code section 12020 lists the following illegal injurious objects, but does not specifically define them:

- a bullet containing or carrying an explosive agent
- blackjack
- slingshot
- billy
- sandclub
- sandbag

Weapons commonly known as blackjacks, slingshots, billies, nunchakus, sandclubs, sandbags, metal knuckles, and sawed-off shotguns, are nuisances. These weapons *may* be confiscated and destroyed whenever they are found within the state. (Pen. Code, § 12029.) Furthermore, school authorities may take any injurious object--objects capable of inflicting substantial bodily damage which are not necessary for the student's academic purposes--from a student while he or she is on school grounds or under the authority of school personnel. (Ed. Code, §§ 49330, 49331.)

After an injurious object has been confiscated from a student, school personnel *may* notify the student's parent or guardian. School personnel *may* keep the injurious object in protective possession until the risk of its use as a weapon disappears, or until a parent or guardian, who has requested school personnel to keep the object, comes personally to the school to take possession of the injurious object. (Ed. Code, § 49332.)

If a student brings an injurious object to school and presents it to school authorities for safekeeping, the student may have the object returned at the end of the school day *if* it is lawful to possess the object off school grounds. (Ed. Code, § 49333.)

a. **Possession of Weapons**
(Crime Reporting Form, #8)

It is a felony to manufacture or cause to be manufactured, import into the state, keep, offer or expose for sale, give, lend or possess a cane gun or wallet gun, a firearm not immediately recognizable as a firearm, ammunition containing a flechette dart or bullet containing an explosive agent, or any of the following weapons: blackjack, slingshot, billy, nunchaku, sandclub, sandbag, sawed-off shotgun, or metal knuckles. It is also a felony to carry a concealed explosive substance, dirk, or dagger.

It is a felony to manufacture or cause to be manufactured, import into the state, keep, offer or expose for sale, give, lend or possess any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges, for use as a weapon for throwing. (Pen. Code, § 12020.)

b. **Possession of Firearm on School Grounds**
(Crime Reporting Form, #8a)

It is either a misdemeanor or felony to unlawfully bring or possess a firearm on school grounds unless the person has the written permission of school authorities to bring or possess the weapon. (Pen. Code, § 626.9.)

c. **Possession of Concealed Firearm**
(Crime Reporting Form, #8a)

It is either a misdemeanor or felony to carry a concealed pistol, revolver, or other firearm without having a license to carry the firearm. (Pen. Code, § 12025.)

d. **Possession of Loaded Firearm**
(Crime Reporting Form, #8a)

It is a misdemeanor to carry a loaded firearm on one's person or in a vehicle while in a public place, unless authorized by law. (Pen. Code, § 12031.)

e. **Possession of Knife on School Grounds**
(Crime Reporting Form, #8b)

It is a misdemeanor to unlawfully bring or possess on school grounds a dirk, dagger, knife with a blade longer than 3½ inches, folding knife with a blade that locks into place, or razor with an unguarded blade. (Pen. Code, § 626.10.)

f. **Possession of Switch-Blade Knife**
(Crime Reporting Form, #8b)

It is a misdemeanor to carry, sell, offer for sale, expose for sale, loan, transfer, or give to another person a switch-blade knife having a blade over two inches long. (Pen. Code, § 653k.)

g. **Exhibition of Weapon in Rude, Angry or Threatening Manner**
(Crime Reporting Form, #8)

It is a misdemeanor for a person to draw or exhibit a deadly weapon (other than a firearm) in a rude, angry, or threatening manner in the presence of another person, except in self-defense. It is also a misdemeanor to use a deadly weapon (other than a firearm) in a fight or quarrel.

It is a felony to draw or exhibit a loaded or unloaded firearm in a rude, angry or threatening manner in the presence of a peace officer by a person who knows or reasonably should know that the victim is a peace officer performing his or her duties and such peace officer is actually engaged in the performance of his or her duties. (Pen. Code, § 417.)

h. **Reckless or Malicious Possession of Explosive in or Near School**
(Crime Reporting Form, #8c)

It is a felony to recklessly or maliciously possess a destructive device or explosive on a public street or highway, in or near a public building, including a school, or a transportation source that carries passengers, or any other public place ordinarily passed by people. (Pen. Code, § 12303.2.)

i. **Intentional Possession of Explosive**
(Crime Reporting Form, #8c)

It is a felony to possess, explode, ignite, or attempt to explode or ignite a destructive device or explosive with the intent to injure, intimidate, or terrify any person, or with the intent to wrongfully injure or destroy any property. (Pen. Code, § 12303.3.)

4. **Robbery**
(Crime Reporting Form, #5)

Robbery is defined as the "felonious taking of personal property in the possession of another from his person or immediate presence, and against his will, accompanied by means of force or fear." (Pen. Code, § 211.)

The fear of robbery exists when the robbery victim is afraid of an unlawful injury to his or her person or property or that of his relatives, or when the robbery victim is afraid of an immediate and unlawful injury to the person or property of anyone in his or her company at the time of the robbery. (Pen. Code, § 212.)

Robbery and attempted robbery are felonies. (Pen. Code, § 213.)

5. **Extortion**
(Crime Reporting Form, #6)

Extortion involves "the obtaining of property from another, with his consent or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear. . . ." (Pen. Code, § 518.)

Fear of extortion may be induced by a threat to unlawfully injure the person or property of the individual threatened or of a third person. (Pen. Code, § 519.)

a. **Extortion by Force or Threat**

It is a felony to commit an act of extortion through force or threat. (Pen. Code, § 520.)

b. **Extortion of Public Officers and Employees and School Officials by Threat**

It is either a misdemeanor or felony to intentionally cause, attempt to cause, or actually cause a public officer or employee or school official to refrain from performing his or her duties, or to threaten to unlawfully injure that person or his or her property, and the person threatened reasonably feels that the threat could be carried out. Such threats include those communicated personally or by telephone, telegraph, or letter. (Pen. Code, § 71.)

6. **Child Abuse**
(Crime Reporting Form, #10)

In recent years, the public has learned horrifying information about incidents of child abuse. Consequently, school personnel have assumed greater responsibilities for recognizing child abuse symptoms, learning about professional obligations as required by California law, and complying with child abuse reporting procedures. The California Legislature has responded to the problem by enacting statutes that define child abuse and specify procedures which school personnel must follow in cases of known or suspected child abuse.

Child abuse (Pen. Code, §11165, subd. (g)) refers to any of the following acts:

- ***Physical Abuse***--any physical injury which is inflicted by other than accidental means on a child by another person.

- ***Sexual Abuse***--sexual assault or sexual exploitation of a child. (Pen. Code, § 11165, subd. (b).) (See "Sexual Abuse" section.)

- ***Intentional Cruelty or Unjustifiable Punishment***--intentionally causing, inflicting, or permitting a child to suffer unjustifiable physical pain or mental suffering, or having the care or custody of a child, intentionally causing or permitting the child's person or health to be endangered. (Pen. Code, § 11165, subd. (d).)

- ***Corporal Punishment or Injury***--intentionally inflicting upon a child any cruel or inhuman corporal punishment or injury which results in a traumatic condition. (Pen. Code, § 11165, subd. (e).)

- ***Abuse in Out-of-Home Care***--administrator or employee of a public or private residential school neglecting or inflicting physical abuse, sexual abuse, corporal punishment or injury, or intentional cruelty or unjustifiable punishment upon a child. (Pen. Code, §§ 11165, subd. (f), 11165.3, subd. (b).)

- ***Neglect***--negligently treating or maltreating a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. (Pen. Code, § 11165, subd. (c).)

a. Intentionally Causing or Permitting a Child to Suffer

It is either a misdemeanor or felony to intentionally cause or permit a child to suffer or inflict upon a child unjustifiable physical pain or mental suffering under circumstances or conditions ***likely to*** produce great bodily harm or death. It is also unlawful for a person having the care or custody of a child to intentionally cause or permit a child's person or health to be injured, or intentionally cause or permit a child to be placed in a situation that endangers his or her person or health under circumstances and conditions ***likely to*** produce great bodily harm or death.

It is a misdemeanor to intentionally cause or permit a child to suffer, or inflict unjustifiable physical pain or mental suffering upon a child under circumstances or conditions ***other than those likely to*** produce great bodily harm or death. It is also unlawful for a person having the care or custody of a child, to intentionally cause or permit a child's person or health to be injured, or intentionally

cause or permit a child to be placed in a situation that endangers his or her person or health under circumstances or conditions *other than those likely to* cause great bodily harm or death. (Pen. Code, § 273a.)

7. **Sexual Abuse**
(Crime Reporting Form, #4)

As stated in Penal Code section 11165, subdivision (b), sexual abuse refers to any of the acts constituting sexual assault or sexual exploitation, as follows:

a. **Sexual Assault**

. *Rape*--sexual intercourse accomplished with a person who is not married to the perpetrator and which takes place when:

(1) the victim is incapable of giving legal consent to sexual intercourse and this is known or reasonably should be known to the person committing the act. Incapacity may result from a mental disease, defect, or disorder, or physical disability; or

(2) the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the person or another; or

(3) the victim cannot resist because a controlled, intoxicating, or anesthetic substance has been administered by the perpetrator; or

(4) the victim is unconscious of the nature of the act, and the accused is aware of such unconsciousness; or

(5) the victim consents because he or she has been intentionally led to believe that the person committing the act is the victim's husband or wife; or

(6) the act is accomplished against the victim's will by the perpetrator threatening future retaliation against the victim or another person and the victim reasonably believes the perpetrator will carry out the threat; or

(7) the act is accomplished against the victim's will by the perpetrator threatening to use the authority of a public official to arrest, jail, or deport the victim or another and the victim reasonably believes the perpetrator is a public official. (Pen. Code, § 261.)

An act of rape as defined in Penal Code section 261 is a felony. (Pen. Code, § 264.)

. *Rape in Concert*--when two or more persons commit rape by force or violence against the will of the victim; the act

may be committed either personally or by aiding and abetting the other person committing the rape. (Pen. Code, § 264.1.)

Rape in concert is a felony. (Pen. Code, § 264.1.)

- ***Incest***--sexual intercourse between parents and children, ancestors and descendants, brothers and sisters of half or whole blood, and uncles and nieces or aunts and nephews. (Civ. Code, § 4400.)

  Incest is a felony. (Pen. Code, § 285.)

- ***Sodomy***--contact between the penis of one person and the anus of another person. (Pen. Code, § 286.)

  It is either a misdemeanor or felony to participate in an act of sodomy when:

  (1) the victim is under 18 years of age; or

  (2) the victim is unconscious of the nature of the act and this is known to the perpetrator.

  It is a felony to participate in an act of sodomy when:

  (1) the victim is under 16 years of age and the perpetrator is over 21 years of age; or

  (2) the victim is under 14 years of age and the perpetrator is more than 10 years older; or

  (3) the act is accomplished against the victim's will; or

  (4) a person voluntarily acts in concert with another person to accomplish the act against the victim's will; or

  (5) the victim is incapable of giving legal consent and this is known or reasonably should be known to the perpetrator. (Pen. Code, § 286.)

- ***Lewd or Lascivious Conduct***--an act with a child under the age of 14 years that is intended to arouse, appeal to, or satisfy the sexual desires of the person committing the act, or the child. (Pen. Code, § 288.)

  Committing a lewd and lascivious act with a child is a felony when the victim is under 14 years of age or the perpetrator uses force, violence, duress, menace, or threat of great bodily harm. (Pen. Code, § 288.)

- ***Oral Copulation***--contact between the mouth of one person and the sexual organ or anus of another person. (Pen. Code, § 288a.)

  It is either a misdemeanor or felony to participate in an act of oral copulation when:

  (1) the victim is under 18 years of age; or

  (2) the victim is unconscious of the nature of the act and this is known to the perpetrator.

  It is a felony to participate in an act of oral copulation when:

  (1) the victim is under 16 years of age and the perpetrator is over 21 years of age; or

  (2) the victim is under 14 years of age and the perpetrator is more than 10 years older; or

  (3) the act is accomplished against the victim's will; or

  (4) a person voluntarily acts in concert with another person to accomplish the act against the victim's will; or

  (5) the victim is incapable of giving legal consent and this is known or reasonably should be known to the perpetrator. (Pen. Code, § 288a.)

- ***Penetration of a Genital or Anal Opening***--insertion into another person's genital or anal opening of a foreign object, substance, instrument or device (including any body part except a sexual organ). (Pen. Code, § 289.)

  Acts of penetrating the genital or anal openings of another person are felonies when:

  (1) the act is accomplished against the victim's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person for the purpose of sexual arousal, gratification or abuse; or

  (2) the victim is incapable of giving legal consent and this is known or reasonably should be known to the person committing the act, for the purpose of sexual arousal, gratification, or abuse. (Pen. Code, § 289.)

- ***Child Molestation***--Penal Code section 647a (see subparagraph "c" below).

b. **Sexual Exploitation**

- preparing, distributing, or selling obscene matter depicting a child involved in obscene acts (Pen. Code, § 311.2);
- employing a minor to perform obscene acts (Pen. Code, § 311.4);
- knowingly promoting, aiding, employing, using, persuading, inducing, or coercing, or any person responsible for the child's welfare knowingly permitting or encouraging, a child to engage in prostitution or to pose or model for purposes of preparing a film, photograph, negative, slide or live performance involving obscene sexual conduct for commercial purposes; or
- depicting or knowingly developing, duplicating, printing, or exchanging any film, photograph, videotape, negative, or slide showing a child engaged in obscene sexual conduct.

c. **Annoying or Molesting Children**

It is a misdemeanor to annoy or molest a child under the age of 18. (Pen. Code, § 647a.)

Note: "'The object of section 647a is to protect children from sex offenders and to permit apprehension and segregation of such offenders. (***People*** v. ***Pallares*** (1952) 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173]; ***People*** v. ***Carskaddon*** (1957) 49 Cal.2d 423, 425 [318 P.2d 4].) Section 647a has been construed as follows: "When the words annoy or molest are used in reference to offenses against children, there is a connotation of abnormal sexual motivation on the part of the offender. Although no specific intent is prescribed as an element of this particular offense, a reading of the section as a whole in the light of the evident purpose of this and similar legislation enacted in this state indicates that the acts forbidden are those motivated by an unnatural or abnormal sexual interest or intent with respect to children. It should be noted further that the section must be construed reasonably as setting up an objective test for annoyance or molestation; a childish and wholly unreasonable subjective annoyance, arising, for example, from a child's dislike for proper correction by a teacher, is not covered by the section. The annoyance or molestation which is forbidden is in no sense a purely subjective state on the part of the child." (***People*** v. ***Pallares***, ***supra***, 112 Cal.App.2d Supp. at pp. 901-902; 2 Witkin, Cal. Crimes (1963) § 620, p. 568; ***In re Gladys R.*** (1970) 1 Cal.3d 855, 867-868 [83 Cal.Rptr. 671, 464 P.2d 127].)

"'Illustrations of acts held to violate section 647a are: ***People*** v. ***La Fontaine*** (1978) 79 Cal.App.3d 176 [144 Cal.Rptr. 729], defendant offered a 13-year-old victim money if he would permit the defendant to perform a sexual act upon him; ***People*** v. ***Moore*** (1955) 137 Cal.App.2d 197 [290 P.2d 40], defendant lifted an eight-year-old girl by the buttocks and rubbed against her body; ***People*** v. ***McNair*** (1955) 130 Cal.App.2d 696 [279 P.2d 800], defendant exhibited his private parts to a seven-year-old. . . .'" (***People*** v. ***Monroe*** (1985) 168 Cal.App.3d 1205, 1212.)

d. Sex Offender on School Grounds

It is unlawful for a sex offender to come into a school building or upon school grounds or public areas adjacent to the school. The only exceptions are if the person has written permission to enter from the school authorities, or if he or she is a parent or guardian of a child attending that school, or is a student at the school.

Such an act is a misdemeanor if he or she:

- remains on campus after being asked to leave by the school authorities; or
- returns to school grounds within 72 hours after being asked to leave by the school authorities; or
- has otherwise established a continued pattern of unauthorized entry. (Pen. Code, § 626.8.)

e. Selling Harmful Matter Within 500 Meters of School

It is a misdemeanor for a person to knowingly sell or offer to sell harmful matter publicly displaying photographs of sodomy, oral copulation, sexual intercourse, masturbation, beastiality, or a photograph of an exposed, erect penis in a vending machine located on a public sidewalk within 500 meters of an elementary school, junior high school, high school, or public playground. (Pen. Code, § 313.1; see Pen. Code, § 313, subd. (a).)

8. Substance Abuse
(Crime Reporting Form, #7)

Illegal drug and alcohol actions on school campuses include student use, purchase, possession, or distribution of such substances, as follows:

- ***Use***--acting as if under the influence, or appearing to be under the influence of an illegal substance.

- ***Purchase***--buying or trading goods in exchange for an illegal substance.

- ***Possession***--possessing (in clothing or among personal property) or controlling (unique knowledge of location of) an illegal substance.

- ***Distribution***--transferring an illegal substance to any other person with or without exchanging money or other valuables.

Illegal drugs include the following:

- ***Marijuana***--all parts of the plant cannabis sativa L. (Health & Saf. Code, § 11018.)

- ***Narcotic Drugs***, including:

  - opium and opiates, and any salt, compound, isomer, derivative, or preparation thereof;

  - opium poppy and poppy straw (both parts of the opium plant);

  - coca leaves, and any salt, compound, derivative, or preparation thereof;

  - cocaine, and any salt, isomer, derivative, or preparation thereof. (Health & Saf. Code, § 11019.)

- ***Controlled Substances***,[6] including the following types:

  - opium or opiates as described above (Health & Saf. Code, § 11054, subds. (b)(1-48) and (c)(1-23); and § 11055, subds. (b)(1-5) and (c)(1-24));

  - hallucinogenic substances, including but not limited to marijuana, mescaline, lysergic acid diethylamid (LSD), peyote, psilocybin (mushrooms) (Health and Saf. Code, § 11054, subd. (d)(1-23));

  - depressants (Health & Saf. Code, § 11054, subd. (e)(1-2); § 11055, subd. (e)(1-4); § 11056, subd. (c)(1-11) and § 11057, subd. (d)(1-20));

  - stimulants (Health & Saf. Code, § 11055, subd. (d)(1-4); § 11056, subd. (b)(1-6); and § 11057, subd. (f)(1-5));

  - any other narcotic drug (Health & Saf. Code, § 11019; § 11056, subd. (e)(1-8); § 11057, subd. (c)(1-2); and § 11058, subd. (c)(1-6)).

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[6]All controlled substance drugs are specifically referenced in the statutes by their legal, medical definitions; however, only those referenced in statutes pertaining to schools have been included herein.

. ***Hypnotic Drug***[7]--Any dangerous drug that is unsafe for self-medication, and is designed to feed or treat animals (other than man). These drugs are used to produce hypnotic effects. (Bus. & Prof. Code, § 4211.)

. ***Drug Paraphernalia***--All equipment, products and materials designed or marketed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing any controlled substance into the human body. (Health & Saf. Code, § 11014.5.)

a. **Possessing Marijuana and Concentrated Cannabis**

It is either a misdemeanor or felony to possess concentrated cannabis.

It is a misdemeanor to possess not more than 28.5 grams of marijuana, other than concentrated cannabis.

It is a misdemeanor to possess not more than 28.5 grams of marijuana, other than concentrated cannabis, upon school grounds providing instruction in kindergarten or any of grades 1 through 12 during hours when school activities are occurring. (Health & Saf. Code, § 11357.)

b. **Possessing Drug Paraphernalia**

It is unlawful to possess a device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking any of the following controlled substances: opiates; opium derivatives; depressants; mescaline; peyote; synthetic equivalents of cannabis sativa L; coca leaves and any salt compound, derivative or preparation thereof; or narcotic drugs. (Health & Saf. Code, § 11364.)

c. **Presence Where Designated Controlled Substances Are Used**

It is unlawful to be in or visit a place where any of the controlled substances or narcotic drugs referred to in Health and Safety Code section 11364 are being illegally smoked or used when the person knows such activity is occurring. (Health & Saf. Code, § 11365.)

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[7]All hypnotic drugs are specifically referenced in the statutes by their legal, medical definitions; however, only those referenced in statutes pertaining to schools have been included herein.

d. Inducing a Minor to Commit an Offense

It is either a misdemeanor or felony to intentionally and voluntarily solicit, induce, encourage, or intimidate a minor to obtain or attempt to obtain a specified controlled substance or narcotic drug by fraud, deceit, misrepresentation, subterfuge, or concealment of a material fact. (Health & Saf. Code, § 11371.1.)

e. Soliciting, Inducing, Encouraging Minor Involvement With Controlled Substances

It is a felony to intentionally and voluntarily solicit, induce, encourage, or intimidate a minor to use or be under the influence of a controlled substance referred to in Health and Safety Code section 11364.

It is a felony to hire, employ, or use a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle such controlled substances.

It is a felony to unlawfully sell, furnish, administer, or give, or offer to sell, furnish, administer, or give, such controlled substances to a minor. (Health & Saf. Code, §§ 11353, 11354.)

f. Selling Controlled Substances on School Grounds

It is a felony for a person 18 years of age or older to unlawfully prepare controlled substances for sale upon school grounds or a public playground, or to sell or give away a controlled substance to a minor under 14 years of age upon the grounds of a school providing instruction in kindergarten and grades 1 through 12 during hours when school activities for minors are occurring. (Health & Saf. Code, § 11353.5.)

If a court finds that a minor has unlawfully possessed a controlled substance on the grounds of a school providing instruction in kindergarten or any of grades 1 through 12 during hours when school is open for a school-related activity or instruction, it *shall* require such minor to perform no less than 40 hours of community service as a condition of probation. The only exception is if the court finds and states on the minor's record reasons that such a condition is inappropriate. (Welf. & Inst. Code, § 729.8.)

g. Selling, Dispensing, Distributing Toluene Substances (Glue)

It is a misdemeanor to sell, dispense, or distribute toluene or any substance or material containing toluene to a person under 18 years of age.

This section's provisions ***shall*** apply to, but are not limited to, the sale or distribution of glue, cement, dope, paint thinners, paint, and any combination of hydrocarbons alone or combined with any substance, including paint, paint thinners, shellac thinner, and solvents, which when inhaled, ingested or breathed can cause a person to become intoxicated.

This section ***shall not*** prohibit gasoline or other motor vehicle fuel sales to persons under 18 years of age.

This section ***shall not*** apply to any glue or cement that has been certified by the State Department of Health Services as containing a substance causing an unpleasant odor or inducing sneezing. It also ***shall not*** apply where the glue or cement is sold, delivered, or given away as part of a kit used to construct models or hobby craft items. (Pen. Code, § 380.)

h. **Possessing Toluene Substance (Glue)**

It is a misdemeanor to possess or be under the influence of toluene or any substance or material containing toluene with the intent to breathe, inhale, or ingest such substance for the purpose of causing intoxication, elation, euphoria, dizziness, stupefaction, dulling of the senses, or changing or disturbing the audio, visual or mental processes.

It is a misdemeanor for any person to possess or be under the influence of any substance or material determined by the State Department of Health Services to have toxic qualities similar to toluene with the intent to breathe, inhale, or ingest such substance for the purpose of causing intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, satisfaction, stupefaction, dulling of the senses, or changing or disturbing the audio, visual or mental processes. (Pen. Code, § 381.)

i. **Possessing, Selling, Consuming Alcoholic Beverages on School Grounds**

It is a misdemeanor to possess, consume, sell, give or deliver an alcoholic beverage to a person in a public school or on public school grounds. Anyone convicted of such an act ***shall***, in addition to the penalty imposed for the misdemeanor, no longer be allowed to use public school property.

It is ***not*** unlawful for a person to acquire, possess or use an alcoholic beverage if the following applies:

- The alcoholic beverage is acquired, possessed or used for a school course and the person has received authorization from the school's governing body.

- The public schoolhouse is surplus school property leased to a lessee in a city with a population of less than 50,000 people or its grounds are in an unincorporated area and are leased to a civic organization.

- The alcoholic beverages are acquired, possessed, or used during events at a college-owned or operated veterans' stadium with a capacity of over 12,000 people, located in a county with a population of over 6 million people. (Bus. & Prof. Code, § 25608.)

j. Selling Alcoholic Beverages to Persons Under 21 Years of Age

It is a misdemeanor to sell, furnish, give, or cause to be sold, furnished, or given away, an alcoholic beverage to a person under 21 years of age.

It is a misdemeanor for a person under 21 years of age to purchase or consume in on-sale premises an alcoholic beverage.

It is a misdemeanor for an on-sale licensee to knowingly allow a person under 21 years of age to consume an alcoholic beverage in on-sale premises, whether or not the licensee knows the person is under 21 years of age. (Bus. & Prof. Code, § 25658.)

k. Alcohol on School Buses

Alcoholic beverages ***shall not*** be transported in a school bus when a student is aboard. (Cal. Admin. Code, tit. 13, § 1221.)

l. Tobacco Smoking on School Grounds

A high school district's governing board ***shall*** take all practical steps to discourage high school students from smoking. However, it ***may*** adopt rules and regulations that permit tobacco smoking and possession on a high school campus. Such rules and regulations ***shall not*** permit students to smoke in classrooms or other enclosed areas which students are required to occupy, or which are usually occupied by nonsmoking students. (Ed. Code, § 48901.)

m. Smoking on School Buses

Smoking is not allowed in a school bus when a student is aboard. (Cal. Admin. Code, tit. 13, § 1222.)

n. Possessing Nitrous Oxide

It is a misdemeanor to possess or be under the influence of nitrous oxide or any substance containing nitrous oxide with

the intent to breathe, inhale, or ingest for the purposes of intoxication, elation, euphoria, dizziness, stupefaction, dulling of the senses, or changing or disturbing the audio, visual or mental processes. This section *shall not* apply to any person under the influence of nitrous oxide administered by a licensed dentist, physician or surgeon. (Pen. Code, § 381b.)

9. **Hazing**
(Crime Reporting Form, #10)

The practice of hazing is expressly forbidden in California law. Hazing includes any method of initiating or preinitiating a student into a student organization or any amusement engaged in with respect to such an organization which causes, or is likely to cause, "bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm."

"Customary athletic events or other similar contests or competitions" are not considered hazing. (Ed. Code, § 32050.)

a. **Participating in Hazing**

It is a misdemeanor for a student to plan or participate in hazing, or commit an act that causes or is likely to cause bodily danger, physical harm, or personal humiliation which results in physical or mental harm to a fellow student. (Ed. Code, § 32051.)

A person who participates in the hazing of another, or a corporation or association which knowingly allows its members to participate in the hazing of another person, *shall* forfeit any right to public funds, scholarships or awards and shall be deprived of any sanction or approval given by a public educational institution or agency.

If the Attorney General, or the district attorney of a county or city and county, has reason to believe a forfeiture is necessary, he or she *may* institute a proceeding in the superior court to do so. Any funds so forfeited *shall* be deposited in the State Treasury and credited to the State School Fund. (Ed. Code, § 32052.)

10. **Miscellaneous Crimes Against Persons**
(Crime Reporting Form, #10)

California laws governing crimes committed against persons on school property refer to several actions which are not clearly defined by statute or do not neatly fit within a category of

criminal activity. Consequently, this "Miscellaneous Misconduct" section includes several such crimes that explain certain types of misconduct, as well as the penalties involved.

a. Insulting or Abusing a Public School Teacher

It is a misdemeanor for a parent, guardian, or other person to insult or abuse a public school teacher when a student is present or can hear the conversation. (Ed. Code, § 44811.)

It is a misdemeanor for a parent, guardian, or other person to insult or abuse a public school teacher in the presence of students or other school personnel on school premises, public areas adjacent to school premises, or at any other place where the teacher is required to be in connection with assigned school activities. (Ed. Code, § 44812.)

b. Unlawful Fighting, Intentionally Disturbing Another Person, and Using Offensive Language in a School Building

It is a misdemeanor to commit the following actions in a school building or on the school grounds:

- engage in unlawful fighting or challenge another person to fight;
- maliciously and intentionally disturb another person by using loud and unreasonable noise; or
- use offensive words which are likely to provoke an immediate violent reaction. (Pen. Code, §§ 415, 415.5.)

c. Dangerous Fireworks Near Persons
(Crime Reporting Form, #8c)

It is unlawful to place, throw, discharge, ignite, or fire dangerous fireworks at a person or group of persons if there is a likelihood of injury. (Health & Saf. Code, § 12680.)

d. Disturbing an Assembly or Meeting

It is a misdemeanor to illegally and intentionally disturb or break up a lawful assembly or meeting. (Pen. Code, § 403.)

e. Threatening a School Employee

It is either a misdemeanor or felony to intentionally attempt to cause or actually cause a school official to refrain from performing his or her duties by threatening to unlawfully injure any person or property and it reasonably appears that the threat could be carried out. (Pen. Code, § 71.)

B. Crimes Against Property

1. Vandalism

(Crime Reporting Form, #9e)

The California Penal Code states that vandalism is committed when a person maliciously defaces with paint or any other liquid or damages or destroys any property not his or her own. (Pen. Code, § 594.) While the ***malicious*** commission of vandalism is treated as a misdemeanor, the negligent or mischievous commission of vandalism is not specifically addressed in the Penal Code and is generally handled as a disciplinary matter by school authorities.

Many California statutes dealing with property crimes do not specifically refer to vandalism. Instead, they mention "willful misconduct," the "wrongful commission," or the "malicious commission" of an act resulting in property damage or destruction. All these terms fall within the Penal Code's definition of vandalism. (See Ed. Code, § 48905; and Cal. Admin. Code, tit. 5, § 305.)

The parent or guardian of a minor whose willful misconduct results in injury or death to a student or a person employed by or voluntarily working for a school district or private school or who willfully injures a school district or private school property or property of a school employee ***shall*** be liable for all damages caused by the minor as follows:

- liability for damages not exceeding $7,500;
- liability for a reward paid pursuant to Government Code section 53069.5 not exceeding $7,500; and
- liability for all property belonging to the school district or private school loaned to the minor and not returned upon demand.

Any school district or private school ***may*** withhold the grades, diploma, and transcripts of a student who has willfully injured school property or has willfully not returned school property upon school employee demand. The grades, diploma or transcripts ***shall*** be given to the pupil after his or her parent or guardian has paid for the damages.

Before withholding such grades, diploma or transcripts, the school district must:

- inform the student of his or her due process rights; and
- inform the parent or guardian in writing of the student's alleged misconduct.

If the minor and parent cannot pay for damages or return the property, the school ***shall*** provide a voluntary work program for the minor in lieu of payment. After such work is completed, the grades, diploma, and/or transcripts ***shall*** be released.

The governing board of each school district or governing body of each private school ***shall*** establish procedures to implement this law. (Ed. Code, § 48904.)

2. **Arson**
(Crime Reporting Form, #9a)

In California, a person is guilty of arson when he or she "willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land or property." (Pen. Code, § 451.)

a. **Causing Great Bodily Injury or Arson of Property**

Arson causing great bodily injury or arson of property is a felony. (Pen. Code, § 451.)

b. **Causing a Fire**

It is unlawful to cause a fire by recklessly setting fire to, burning, or causing to be burned any structure, forest land, or property.

Unlawfully causing a fire that causes great bodily injury is a felony.

Unlawfully causing a fire that causes property to burn, excluding one's own personal property unless it results in an injury to another person or another person's structure, forest land, or property, is a misdemeanor. (Pen. Code, § 452.)

c. **Possessing Flammable, Explosive, or Combustible Material or Device**

It is either a misdemeanor or felony to possess a flammable, explosive, or combustible material or a device with intent to intentionally and maliciously use such material or device to set fire to or burn any structure, forest land, or property.

It is a felony to unlawfully possess, manufacture, give, give away, loan, offer, offer for sale, sell, or transfer a fire bomb.

This section does not prohibit the following authorized uses of such materials or devices:

- properly authorized use by a member of the United States armed forces, a fireman, police officer, peace officer, or law enforcement officer; or
- scientific research or educational purposes; or
- properly authorized brush disposal; or
- any other lawful burning. (Pen. Code, § 453.)

d. Intentionally and Maliciously Attempting to Set Fire

It is a felony to intentionally and maliciously attempt to set fire to, or attempt to burn, aid, counsel, or procure the burning of any structure, forest land, or property. It is also unlawful to commit a preliminary act for the purpose of attempting to commit such actions.

It is unlawful to place or distribute a flammable explosive or combustible material or device in or about any structure, forest land, or property with the intent to eventually intentionally and maliciously set fire to, burn, or procure the setting fire to or burning of the structure, forest land, or property. Such an act shall constitute an attempt to burn such structure, forest land or property. (Pen. Code, § 455.)

3. Burglary and Theft

a. Burglary
(Crime Reporting Form, #9b)

A burglary occurs when a person enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, locked or sealed cargo container, trailer coach (as defined in Veh. Code, § 635), house car (as defined in Veh. Code, § 362), inhabited camper (as defined in Veh. Code, § 243), vehicle, when the doors of such vehicle are locked, aircraft (as defined by the Harb. & Nav. Code), or mine or any underground portion thereof, with intent to commit grand or petty larceny or any felony. (Pen. Code, § 459.) (In this statute, "inhabited" means currently used for dwelling purposes, whether occupied or not (Pen. Code, § 459).)

Burglary of an inhabited dwelling house or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building, is first-degree burglary. All other kinds of burglary are of the second degree. (Pen. Code, § 460.)

Burglary in the first degree is a felony. Burglary in the second degree is either a misdemeanor or felony. (Pen. Code, § 461.)

b. **Possessing Burglar's Tools**
(Crime Reporting Form, #9f)

It is a misdemeanor to possess an instrument or tool with the felonious intent to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code.

It is a misdemeanor to make, alter, or repair an instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony. (Pen. Code, § 466.)

c. **Theft**
(Crime Reporting Form, #9c and #9d)

. ***A theft*** occurs when a person commits any of the following actions:

- feloniously steals, takes, carries, leads, or drives away another person's personal property;

- fraudulently appropriates property entrusted to him or her;

- knowingly and designedly by false or fraudulent representation or pretense, defrauds another person of money, labor, or real or personal property; or

- causes or procures others to falsely report his or her wealth or mercantile credit, thereby fraudulently obtaining credit and possession of money, property, or the labor or service of another person. (Pen. Code, § 484.)

A theft also occurs when a person who finds lost property, under circumstances which give him or her knowledge of or means of inquiring as to the true owner, takes such property for his or her own or another's use without first making reasonable efforts to find the owner and return the property. (Pen. Code, § 485.)

. ***Grand theft*** occurs when the value of money, labor or property taken exceeds $400 (except for those items specifically provided for in this section); when the property is taken from the person of another; or when the property taken is an automobile, firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow or pig. (Pen. Code, § 487.)

Grand theft is either a misdemeanor or felony. (Pen. Code, § 489.)

- ***Petty theft*** includes all other cases of theft that are not grand thefts. (Pen. Code, § 488.)

  Petty theft is a misdemeanor. (Pen. Code, § 490.)

4. **Bomb Threats**
   (Crime Reporting Form, #10)

   a. **Making False Bomb Threats**

      It is either a misdemeanor or felony to knowingly make a false report that a bomb or other explosive has been or will be placed in any public or private place or knowingly and maliciously give, mail, send, place or cause to be sent or placed any false bomb with the intent to make any other person think it is a real bomb. (Pen. Code, § 148.1.)

5. **Miscellaneous Crimes Against Property**
   (Crime Reporting Form, #9)

   a. **Keeping Property of Cultural or Educational Institutions**

      It is a misdemeanor to intentionally keep a book, newspaper, magazine, pamphlet, manuscript or other property belonging to a public or incorporated library, reading room, museum, or other educational institution 30 days after the institution's written notice to return the property.

      The parent or guardian of a minor who intentionally and maliciously commits such an act ***shall*** be liable for all damages caused by the minor. (Ed. Code, § 19911.)

   b. **Duplicating Keys**

      It is a misdemeanor to knowingly make, duplicate or use, attempt to make, duplicate, cause to duplicate or use or possess a key to a public school or community college district without authorization from school authorities. (Pen. Code, § 469.)

   c. **False Fire Alarms**

      It is a misdemeanor to intentionally and maliciously tamper with, molest, injure, or break any fire protection equipment or installation, fire alarm apparatus, wire, or signal. It is also a misdemeanor to intentionally and maliciously send, give, transmit, or sound a false fire alarm by any method.

      It is either a misdemeanor or felony to intentionally and maliciously send, give, transmit, or sound a false fire alarm by any method when great bodily injury or death results therefrom. (Pen. Code, § 148.4.)

C. Crimes That Disrupt Campus Order

In addition to finding ways to combat crimes against persons and property, educators are faced with the equally difficult task of handling those crimes that disrupt campus order. Crimes that disrupt campus order differ significantly from those committed against persons and property--disruptive actions are more often designed to prohibit or inhibit orderly educational and school-related activities, while crimes against persons and property are usually aimed at a particular human or economic target.

Like other campuses across the nation, California schools began experiencing large scale student and nonstudent disruptions in the 1960s, which coincided with many civil and social rights movements. Over the past two decades, the California Legislature has passed a series of laws to control and limit such disruptions. These laws generally fall into four broad categories: trespassing and outsiders, disturbing the peace, riot and unlawful assembly, and loitering.

1. Trespassing and Outsiders
(Crime Reporting Form, #10)

a. Trespassing

The California Penal Code states that a misdemeanor trespass occurs:

- when a person enters any land for the purpose of "injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation . . ."; or

- when the circumstances reasonably indicate that a person has no lawful business to pursue and he or she refuses or fails to leave a public building during those hours when the building is regularly closed to the public after being requested to leave by a guard, watchperson, or custodian. (Pen. Code, § 602, subds. (j) and (p).)

b. Outsiders

No outsider can enter or remain on school grounds during school hours without registering with the school authorities. The only exception is to enter the school grounds to register. If signs are posted which restrict the entrance or path the outsider takes to register, the outsider *must* obey the signs. (Pen. Code, § 627.2.)

An "outsider" on school grounds is any person other than:

- a student of the school, except any student who is currently suspended from the school;

- a parent or guardian of a student of the school;
- an officer or employee of the school district that maintains the school;
- a public employee whose employment requires him or her to be on school grounds;
- any person who is on school grounds at the request of the school;
- a school employee organization representative who is engaged in activities related to representing school employees;
- an elected public official;
- a person who comes within the provisions of section 1070 of the Evidence Code by virtue of his or her current employment or occupation. (Pen. Code, § 627.1.)

A school authority may refuse to register an outsider if he or she reasonably concludes that the outsider's presence or acts would:

- disrupt the school, its students, teachers or other employees;
- result in property damage; or
- result in the distribution or use of unlawful or controlled substances.

The school authorities may take away an outsider's registration if he or she reasonably concludes that the outsider's presence would interfere or is interfering with the peaceful conduct of school activities or would disrupt or is disrupting the school, its students, teachers, or other employees. (Pen. Code, § 627.4; see Pen. Code, § 626.4.)

Any person denied registration or whose registration is taken away *may* request a hearing before the school authorities. The request *must* be submitted in writing within five days after the denial or revocation and *must* include the reasons why such actions were improper and the address where the hearing notice is to be sent. The school authorities *must* promptly mail written notice of the date, time and place of the hearing to the person. The hearing *must* be held within seven days after receiving the request. (Pen. Code, § 627.5.)

It is a misdemeanor for an outsider who enters school grounds during school hours to refuse to leave upon request of the school authorities. The outsider must not return for at least 48 hours. The request to leave ***shall*** be made on the basis that it reasonably appears that the person's continued presence on campus would disrupt or interfere with classes or other school programs. Refusal to leave or returning within 48 hours is a misdemeanor.

A person asked to leave public school grounds may appeal to the district's superintendent no later than the second school day after he or she left the premises. The superintendent ***shall*** review the appeal with the school authorities and the person making the appeal and render his or her decision within 24 hours after the appeal is made. The superintendent's decision is binding but may be appealed by the person seeking permission to enter to the district's governing board no later than the second school day after the decision was made. The district's governing board ***shall*** consider and decide the appeal at its next scheduled meeting. The governing board's decision ***shall*** be final.

If the district superintendent's or governing board's office is located on the school grounds from which a person has been requested to leave, that person ***may*** enter the school grounds for the sole purpose of making an appeal as described above. (Ed. Code, § 32211; see Pen. Code, §§ 626.6, 626.8, 627.7-627.8.)

Any person who violates any law while on school grounds, regardless of whether he or she was registered when the violation occurred, ***may*** be punished for that violation. In no case can a person be punished for the same act under more than one provision of the Penal Code. (Refer Pen. Code, § 654.) (Pen. Code, § 627.10.)

c. **Suspended Student Entering School**

It is a misdemeanor for any student or employee to intentionally and knowingly enter a campus where he or she has been denied access if the following has occurred:

- the person has been suspended or dismissed from the school after a hearing for disrupting the school's orderly operation; and
- the person has been denied access to the campus as part of the suspension or dismissal; and
- the person has been served by registered or certified mail with a written notice of such suspension and dismissal conditions.

The only exception is if the person has written permission to enter the campus from the school authorities. (Pen. Code, § 626.2.)

2. **Disturbing the Peace**
(Crime Reporting Form, #10)

The California Legislature has passed a series of laws designed to reduce and control actions that disturb and disrupt the peace and order of the education process. Such actions, as the following statutes indicate, include a wide array of unreasonable, willful, and/or malicious offenses committed on school grounds.

a. **Minor's Entrance on School Grounds for the Purpose of Disrupting Order**

It is a misdemeanor for a minor over 16 years of age or an adult who is not an enrolled student of the school, to enter a school ground and intentionally interfere with the discipline, good order, lawful conduct, or administration of any class or school activity. Such actions ***must*** be committed with the intent to disrupt, obstruct, or inflict damage to property or bodily injury upon any person. (Ed. Code, § 44810.)

b. **Willfully Disrupting a School Meeting**

It is a misdemeanor to intentionally disturb any public school or public school meeting. (Ed. Code, § 32210.)

c. **Use of Electronic Recording or Listening Devices in the Classroom**

It is prohibited to use an electronic listening or recording device in an elementary or secondary school classroom without obtaining prior permission from the teacher and the principal.

If such an act is committed by anyone other than a student, it is a misdemeanor. Any student violating this law ***shall*** be subject to appropriate disciplinary action. (Ed. Code, § 51512.)

3. **Riot, Rout and Unlawful Assembly**
(Crime Reporting Form, #10)

a. **Riot**

Actions that constitute a riot include any "use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law." (Pen. Code, § 404, subd. (a).)

It is a misdemeanor to intentionally cause or attempt to cause a riot by engaging in conduct which urges a riot or urges others to act forcefully or violently, or to burn or destroy property under circumstances which produce a clear, present, and immediate danger of such acts occurring.

This section does not apply to, affect, restrain, or interfere with otherwise lawful labor organization activity. (Pen. Code, § 404.6.)

b. Rout and Unlawful Assembly

A rout occurs "whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed." (Pen. Code, § 406.)

An unlawful assembly occurs "whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner." (Pen. Code, § 407.)

c. Failure to Disperse

It is a misdemeanor for a person who has been lawfully warned to disperse, to remain at the place of any riot, rout, or unlawful assembly. (Pen. Code, § 409.)

d. Refusing to Disperse

It is a misdemeanor for two or more persons, who assemble to disturb the public peace or commit an illegal act, to refuse to disperse after being commanded to do so by a public officer. (Pen. Code, § 416.)

4. Loitering

Loitering means "to delay, to linger, or to idle about any such school or public place without lawful business for being present." (Pen. Code, § 653g.)

a. Loitering Around Schools or Other Places Attended by Children

It is a misdemeanor to loiter about and remain at a school or public place at or near which children attend or normally congregate. It is further unlawful for a person to reenter such a place within 72 hours after being asked to leave by the school authorities, a city police officer, a sheriff, deputy sheriff, or California Highway Patrol Officer. (Pen. Code, § 653g.)

III. TAKING ACTION AGAINST SCHOOL CRIME

Introduction

Understanding how California law defines certain crimes, what procedures school personnel may or must take when such crimes occur on campus, and how perpetrators of a crime can or will be punished are but the first steps in comprehending laws governing school crime. The next step requires an awareness of what the school community may or must do once a crime has been committed. For instance, after a crime occurs:

- Who is responsible for detaining and/or arresting the suspect or perpetrator?
- What internal disciplinary procedures are necessary and appropriate for students? suspension? expulsion? corporal punishment? referral to an opportunity school?
- How should a school employee who breaks the law be disciplined?
- Who is liable for certain criminal incidents? the district or school? a school employee? the parent or guardian of a student? or the student?

These are questions specifically addressed in this section. By interpreting relevant California laws, the section is designed to provide ready access to four types of information: criminal procedures, student disciplinary procedures, school employee disciplinary procedures, and liability. The following outline provides an overview of the categories and specific actions or issues covered in this section:

Criminal Procedures

- Arrest
- Notifying Appropriate Authorities of School and Legal Actions
- Reporting to Child Protective Agency of Child Abuse
- Search and Seizure

Student Disciplinary Procedures

- Detention
- Suspension
- Expulsion
- Exclusion
- Corporal Punishment
- Opportunity Schools
- Community Schools
- Student Records

School Employee Disciplinary Procedures

- Prehiring and Credentialing Procedures
- Disciplinary Procedures

Liability

- District Liability
- School Employee Liability
- Parent or Guardian Liability
- Student Liability

A. Criminal Procedures

Once a crime is committed on campus, or when school authorities become aware of habitual misbehavior, state law requires that certain criminal procedures be invoked. So, in addition to disciplinary procedures that may be used to punish rule-breaking students, schools must also apply various criminal procedures to appropriate circumstances. For instance, if a student commits an assault on school grounds, he or she faces not only possible suspension or expulsion from school, but is also subject to arrest. School employees who commit a crime on campus are subject to professional disciplinary procedures as well as criminal actions. And if an adult, nonschool employee commits a crime on campus, he or she will most likely be arrested.

A series of state laws explain procedures for arrests in general, arrests on school grounds, and arrests of minors who are absent from school but subject to compulsory education requirements. Additionally, laws were recently passed which require the school or school attendance review board (SARB) officials to notify the county district attorney or probation officer for cases of habitual truancy, irregular school attendance, or habitual insubordination or disorder while at school. These two procedures, as well as search and seizure issues, are the primary subjects of this section.

1. Arrest

Arresting students, nonstudent minors, adults, and school personnel are actions which, unfortunately, do occur on some school campuses. Several sections of the California statutes carefully define arrest procedures: the Penal Code clearly explains who may conduct an arrest or take someone into custody, required formalities that must occur when making an arrest, and the penalties for resisting arrest; the Welfare and Institutions Code governs arrest procedures for minors; and the Education Code discusses arrest and custodial procedures for students who are absent from school without a valid excuse.

In general, these statutes refer to the arresting person as either a peace officer or a "private person." Thus, under the law any school employee is considered a private person who may make an arrest upon school grounds if he or she obeys the requirements of the law.

a. Notification to Law Enforcement of Student Assault, Attack, or Menace

It is the mandatory duty of any school employee who is assaulted, attacked, or menaced by a student, to promptly report the incident to the appropriate law enforcement authorities. The employee's supervisor also has the duty to promptly report the incident to the appropriate authorities if he or she knows of such an incident. Penalty for failure to make the report is a misdemeanor.

Compliance with school district governing board reporting procedures does not fulfill reporting requirements mandated under this section.

It is a misdemeanor for any school district employee or school official to interfere with the reporting of such an incident. Further, no school district employee or school official can take any action against any person required by law to make such a report to law enforcement. (Ed. Code, § 44014.)

b. **School Release of Minor to Peace Officer; Responsibility to Notify Parent**

When any school official releases a minor student to a peace officer for the purpose of removing him or her from school grounds, the official ***shall*** immediately try to notify the parent, guardian, or responsible relative regarding such action and the place the student is being taken. The only exception is if a minor has been taken into custody as a victim of suspected child abuse. In those cases, the school official ***shall*** give the peace officer the name and address of the student's parent or guardian. It is the peace officer's responsibility to immediately notify the parent or guardian that the student is in custody and where he or she is being held. If the officer has reason to believe disclosing such information would endanger the minor, he or she ***may*** refuse to tell the parent or guardian where the minor is being held for not more than 24 hours. The officer ***shall*** tell the parent or guardian if the child requires and is receiving medical or other treatment. The juvenile court ***shall*** review any decision not to disclose where the minor is being held at a subsequent detention hearing. (Ed. Code, § 48906.)

c. **Arrest for Assault and Battery on School Grounds**

A peace officer ***may*** arrest a person who commits an assault or battery on school property during hours when school activities are being conducted. The arrest may occur without a warrant whenever:

- the person has committed the assault or battery, although not in the peace officer's presence;
- the peace officer has reasonable cause to believe the person to be arrested has committed the assault or battery, even if it has not in fact been committed.

"School" as used in this section includes any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity

school, continuation high school, regional occupation center, evening high school, or technical school. (Pen. Code, § 243.5.)

d. **Peace Officer's Arrest Under Warrant and Arrest Without Warrant**

A peace officer *may* make an arrest with a warrant, and in the following situations, *may* make an arrest without a warrant:

- whenever he or she has reasonable cause to believe the person to be arrested has committed a public offense in his or her presence;
- when a person has committed a felony, although not in his or her presence;
- whenever he or she has reasonable cause to believe the person to be arrested has committed a felony, even if it has not in fact been committed. (Pen. Code, § 836.)

e. **General Procedures for Arresting a Minor**

A peace officer *may* take a minor into custody without a warrant:

- who is under 18 years old, if the officer has reasonable cause to believe the minor is a "person within the jurisdiction of the juvenile court" who:
  - is in need of proper parental care or control;
  - habitually refuses to obey the reasonable and proper orders of his or her parent, guardian, or custodian, or is beyond the control of such person;
  - is habitually truant and available services are not appropriate or sufficient to correct the truancy, as determined by a school attendance review board (SARB); or
  - persistently disobeys the reasonable and proper orders of school authorities or the SARB and available services are not appropriate or sufficient to correct the disobedience, as determined by the SARB;
  - is guilty or suspected of being guilty of violating a state law or local ordinance other than curfew ordinances for minors;
  - is not responsive to the directives of the SARB or the services provided;

- is a ward or dependent child of the juvenile court, and has either violated a juvenile court order, or has escaped from any commitment ordered by the juvenile court;

- is under 18 years old and found in any public place suffering from any sickness or injury that requires remedial care.

When a minor is taken into temporary custody for being habitually disobedient or truant, committing a crime, violating a court order, or escaping from any commitment, he or she ***shall*** be advised by the peace officer that anything he or she says can be used against him or her and ***shall*** be advised of his or her constitutional rights. (Welf. & Inst. Code, §§ 305, 601, 602, 625, 636, 702.)

f. Resisting Executive Officers; Punishment

It is unlawful for any person to attempt by threat or violence to prevent an executive officer from performing his or her duty. It is also unlawful to knowingly resist by threat or violence such officer. Such an act is punishable by a fine not exceeding $10,000; or by imprisonment in the state prison or county jail not exceeding one year; or by both such fine and imprisonment. (Pen. Code, § 69.)

g. Resisting, Delaying, or Obstructing Officer; Punishment

It is unlawful for any person to resist, delay, or obstruct any public or peace officer who is performing his or her duty. Such an act is punishable by a fine not exceeding $1,000; or by imprisonment in the county jail not exceeding one year; or by both such fine and imprisonment. (Pen. Code, § 148.)

h. Arrest for Absence From School Without Valid Excuse

Any school administrator or his or her designee, attendance supervisor, or peace officer ***may*** arrest or assume temporary custody during school hours of any minor who is subject to compulsory education requirements and is found away from his or her home and is absent from school without a valid excuse. Such minor must be within the county, city, or city and county, or school district. (Ed. Code, § 48264.)

i. Responsibility for Custody of Student Arrested for Absence Without a Valid Excuse

Any person who arrests or assumes temporary custody of a minor as explained above shall deliver him or her either to the parent, guardian or other custodian; to the school from

which the minor is absent; to a nonsecure youth service or community center that is designated by the school or district for counseling; to a school counselor or an attendance officer located at a police station who counsels youth before returning them to school or home; or if the minor is a habitual truant, the person taking custody or arresting the minor *shall* have the minor brought before the county probation officer. (Ed. Code, § 48265.)

j. Responsibility for Reporting an Arrest of Student for Absence Without a Valid Excuse

Any person who arrests or delivers an arrested truant according to Education Code sections 48265 or 48266 *shall* report the matter and any resulting actions to the appropriate school authorities and to the minor's parent or guardian. (Ed. Code, § 48266.)

2. Notifying Appropriate Authorities of School and Legal Actions

Certain school, district, or county officials are required to notify certain authorities about certain types of student conduct. It then becomes the duty of the notified authorities to handle the case and, in turn, to notify the school authorities, student, and his or her parent or guardian about any steps the criminal or juvenile justice system may take.

a. Notifying School Attendance Review Board, County District Attorney or Probation Officer of Habitual Truant, Habitually Insubordinate, Disorderly Students

Any minor student who is habitually truant, habitually insubordinate or disorderly while at school, or irregular in attendance *may* be referred to a county school attendance review board (SARB). The person making the referral *shall* notify the minor and his or her parents or guardian in writing of the SARB name and address and shall indicate that the student and his or her parents will be required to meet with the SARB and the referring person to consider how to handle the referral.

If the SARB determines available community services can resolve the truancy or insubordination, it *shall* direct the student, his or her parents or guardian, or both, to use such services. The SARB *may* require evidence of participation in such services.

If the SARB determines that the available community treatment cannot resolve the problem or if the student, his or her parents, or both, have not responded to the SARB directive, it *may* notify the county district attorney or probation officer if either the district attorney or probation officer has elected to participate in the truancy mediation

program. If they are not participating, the SARB may direct the superintendent of schools to request a juvenile court petition on behalf of the student. The superintendent ***shall*** make such a request and, in turn, the juvenile court ***shall*** hear all evidence in connection with the petition.

In any county that has not established a SARB, if the district determines available community services cannot resolve the problem or if the student, his or her parents, or both, have not responded to the district's directives, the district ***may*** notify the district attorney or probation officer if either has elected to participate in the truancy mediation program. (Ed. Code, § 48263.)

b. **Notifying the County District Attorney or Probation Officer About Truant Students**

In any county that has not established a school attendance review board (SARB), the school district ***may*** notify the district attorney or probation officer by first class mail or other reasonable means of the following if either the district attorney or probation officer has elected to participate in a truancy mediation program:

- name of each student classified as truant; and
- name and address of parent or guardian of each student classified as truant.

After notifying the parents of a student's truancy, the district ***may*** also notify the district attorney or probation officer if the student continues to be truant.

In any county that has not established a SARB, the district attorney or probation officer ***may*** notify the parent or guardian of every truant that they are subject to prosecution for failing to compel the student's attendance at school. After such notification, if the student continues to be truant, the district attorney or probation officer ***may*** request a meeting with the student and his or her parent or guardian to discuss the consequences of such truancy.

Notice of such a meeting ***must*** be served personally or by certified mail at least five days prior to the meeting and ***shall*** contain all of the following:

- name and address of person to receive the notice;
- date, time and place of meeting;
- name of truant minor;
- the code sections authorizing the meeting; and

- notice that the district attorney *may* file a criminal complaint pursuant to Education Code section 48293 against the parent or guardian for failing to compel the student to attend school. (Ed. Code, § 48260.6 and Welf. & Inst. Code, § 601.3; see also Ed. Code, § 48290 et seq.)

c. Parental Liability for Student Nonattendance

It is unlawful for any parent, guardian or other person in charge of any student to fail to compel his or her child to attend school, unless he or she is excused from such action. Such an act is punishable by the following:

- First conviction--fine not exceeding $100.
- Second and subsequent convictions--fine not exceeding $250.
- In lieu of such fines, the court *may* order the parent or guardian to be placed in a parent education and counseling program.

If the parent or guardian is ordered to pay a fine, the court *may*, by court order, allow the payment to be made in installments. However, the court will order also that if the defendant fails to pay the fine or any installment on the due date, or fails to attend a program as ordered, he or she *shall* appear in court for further proceedings. Willful violation of the order to appear in court is punishable as contempt. (Ed. Code, § 48293.)

d. Report to School of Court Ruling

If a minor enrolled in a public school in kindergarten or any of grades 1 through 12 is found by a court of law to have committed any assault, battery, weapon offense, robbery, sex offense, or arson, as set out in Welfare and Institutions Code section 707, subdivision (b), paragraphs 1-15 and 17-19, or to have used, sold, or possessed narcotics or a controlled substance, then it is the court's responsibility to provide written notice to the appropriate school authorities within 7 days of the court's judgment. Such information is confidential and *must* be stamped with the instruction, *"Destroy this record 12 months after the minor returns to public school. Unlawful dissemination of this information is a misdemeanor."* As necessary, such information *shall* be shared with teachers, counselors, or other administrators, who receive this information in confidence for the limited purpose for which it was provided. Intentional violation of the confidentiality provisions is a misdemeanor.

Twelve months after the minor's return to public school or twelve months after receipt of the original notice from the court, whichever occurs last, the record ***must*** be destroyed by the appropriate school officials. At any time after this period, the minor or his or her parent or guardian has the right to make a written request for a review to insure that the record has been destroyed. The school authorities ***must*** respond in writing to this request within 30 days after receipt of the request. If the record has not been destroyed, the school authorities ***must*** explain the reason and specify the date by which the record will be destroyed. (Welf. & Inst. Code, § 827.)

3. **Reporting to Child Protective Agency of Child Abuse**

Any teacher, administrator, child welfare and attendance supervisor, certificated school employee, or licensed school nurse who, while acting within his or her professional capacity, knows about or reasonably suspects a child has been the victim of child abuse ***must*** do the following:

- report the known or suspected instance of child abuse to a child protective agency immediately or as soon as possible by telephone; and

- prepare and send a written report of the incident within 36 hours of receiving the information.

Instructional aides, teachers' aides, and teachers' assistants employed by public and private schools, and classified employees of any public school, who have been trained in child abuse reporting duties and the school or school district has so warranted to the State Department of Education (SDE), must also report known or suspected child abuse immediately or as soon as practically possible by telephone, and within 36 hours in writing. School districts which do not train employees in their reporting duties are required to report to SDE the reasons why this training is not provided.

If two or more persons required to make such a report have joint knowledge or suspicion of child abuse, the telephone report ***may*** be made by one designated person and a single report ***may*** be submitted. If a member of the team knows that the person designated has failed to make the report, he or she ***must*** prepare and submit the written report. No school authority may interfere with these reporting duties, nor may he or she punish the person in any manner for making the report. However, internal procedures to facilitate reporting and apprise supervisors of reports may be established provided that they are not inconsistent with the reporting law (Pen. Code, §§ 11165-11174.5) and do not prohibit or impede reporting directly to a child protective agency.

Any teacher, administrator, child welfare and attendance supervisor, certificated school employee, or licensed school nurse who, while acting within his or her professional capacity, knows or reasonably suspects that mental suffering has been inflicted on a child or that his or her emotional well-being is endangered in any other way, *may* report such information to a child protective agency.

Any other person who knows or reasonably suspects a child has been the victim of child abuse *may* report the known or suspected instance of child abuse to a child protective agency.

Any person hired as a teacher, administrator, child welfare and attendance supervisor, certificated pupil personnel, or licensed school nurse after January 1, 1985, *must* sign a statement prior to beginning of employment that he or she knows about the abuse reporting provisions and will comply with reporting requirements. (Pen. Code, §§ 11165, 11166, 11166.5.)

a. Contents and Confidentiality of Child Abuse Reports

A telephone report of a known or suspected instance of child abuse *must* include the following:

- name of the person making the report;
- name and present location of the child;
- nature and extent of the injury; and
- any other information requested by the child protective agency, including information that led the reporting person to suspect child abuse.

The reporting person *may* provide other information about the incident to the child protective agency investigator.

The identity of all persons who report known or suspected instances of child abuse *shall* be confidential except to the following sources:

- child protective agencies;
- counsel representing a child protective agency;
- district attorney in a criminal prosecution or in a juvenile court proceeding against a minor arising from alleged child abuse by that minor;
- counsel appointed at a detention hearing to represent a minor whose home is alleged to be an unfit home by reason of neglect, cruelty, depravity or physical abuse;

- county counsel or district attorney in an action initiated under Civil Code section 232 or Welfare and Institutions Code section 300;

- by court order; and

- when the reporting person waives confidentiality.

When a person who is not required by law to report a known or suspected instance of child abuse does submit a report, he or she is not required to include his or her name. (Pen. Code, § 11167.)

b. Exemption From Civil and Criminal Liability for Reporting Child Abuse; Penalty for Failing to Report or Interfering With a Report

No mandated reporter who reports a known or suspected instance of child abuse as required or authorized by law can be held civilly or criminally liable for the report. Other (nonmandated) reporters are potentially liable for knowingly making a false report. If a mandated reporter provides the child protective agency with access to the victim, he or she ***shall not*** be civilly or criminally liable for providing that access. Any person who is required by law to report an actual or suspected instance of child abuse which he or she knows to exist or reasonably should know to exist and who fails to do so is guilty of a misdemeanor. (Pen. Code, § 11172.)

Any supervisor or administrator who impedes or inhibits the reporting duties of a mandated reporter or sanctions the person for making a report is guilty of a misdemeanor. (Pen. Code, § 11166.1.)

c. School Official Provision of Student Information to Peace Officer Taking a Suspected Child Abuse Victim Into Custody

When a principal or other school official releases a minor student to a peace officer's custody when the minor is a victim of suspected child abuse, the school official ***shall not*** contact the parent, guardian, or responsible relative. The school official or principal ***shall*** instead provide the peace officer with the address and telephone number of the minor's parent or guardian and it becomes the peace officer's responsibility to make contact as soon as possible. (Ed. Code, § 48906.)

4. Search and Seizure

While searches and seizures by school officials have been addressed in California case law and by the United State Supreme

Court, the state statutes are silent about this specific issue, except for school employee seizure of injurious objects and illegal knives, dirks and daggers.

School officials are not required to obtain a warrant before searching a student suspected of an infraction of school rules or of the criminal law. However, since California public school officials are agents of our state and local governments, searches of students by public school officials must be based on a reasonable suspicion that the student or students to be searched have engaged, or are engaging, in a violation of a school rule or regulation, or a criminal statute. The scope of a permissible search is determined by the objectives of the search, the age and sex of the student, and the nature of the infraction (*In re William G.* (1985) 40 Cal.3d 550.)[8]

a. **Taking an Injurious Object From a Student**

Any certificated or classified district employee who is designated by the governing board for such purposes *may* take any injurious object--objects capable of inflicting substantial bodily damage which are not necessary for the student's academic purposes--possessed by the student. (Ed. Code, §§ 49330, 49331.)

b. **Seizing a Dirk, Dagger, or Knife From a Student**

Any certificated or classified employee or school peace officer of a public school providing instruction in kindergarten or any of grades 1 through 12, *may* seize any dirk, dagger, knife having a blade longer than 3½ inches, folding knife with a blade that locks into place or a razor with an unguarded blade. Any certificated or classified employee or school peace officer of any state university, state college, or community college *may* seize any dirk, dagger, or knife having a fixed blade longer than 3½ inches if he or she knows or has reasonable cause to know the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school. Only duly appointed peace officers or members of the military engaged in the performance of their duties may carry such blade weapons. (Pen. Code, § 626.10.)

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[8]A clear and concise analysis of California case law governing student searches and seizures may be found in the California Department of Justice, Office of the Attorney General, publication, ***Law in the School: A Guide for California Teachers, Parents & Students***, 4th ed. (Sacramento, California: Department of Justice, 1984:62-66.)

B. Student Disciplinary Procedures

For certain offenses committed on school campuses, administrators have an option of invoking criminal procedures, disciplinary procedures, or both. Before making any decisions, administrators should realize it is important to remember that internal disciplinary measures are distinctly different actions with different penalties from those required in criminal procedures. Disciplinary actions punish a student in a way that affects his or her school attendance, conduct, academic achievement, and/or involvement in extracurricular activities. As such, they do not impose criminal sanctions.

Because the student's life can be deeply affected by disciplinary measures, each district must carefully construct its discipline guidelines. According to California law, it is the responsibility of each school district's governing board to designate rules and regulations for student discipline which ***must*** include the following:

- All rules ***must*** be consistent with state law.
- Parents or guardians of all students registered in the district ***must*** be notified about the availability of student discipline rules.
- Each school principal ***must*** insure that all discipline rules are communicated to continuing students at the beginning of each school year and to transfer students when they enroll in the school. (Ed. Code, § 35291.)

Additionally, each school district's governing board ***may*** hold hearings, make findings, and adopt and issue policy statements about pupil in-school behavior and responsibilities. (Ed. Code, § 35181.)

The disciplinary procedures most often included in any district's formal rules and regulations are those discussed in this section: detention, suspension, expulsion, exclusion, corporal punishment, opportunity schools, community schools, and student records.

1. Detention

Detaining a student beyond regular school hours, during lunch, or during other class breaks has always been a popular method of punishing students for minor school rule infractions. A formal detention assignment generally involves the student in supervised activity such as study hall or campus clean-up. California's detention laws specifically address the question of when detention may and may not be assigned, but do not prescribe or recommend detention methods or procedures.

a. After-School Detention

A student ***shall not*** be held for more than one hour after school for disciplinary reasons. The one exception is if

the student has a late after-school bus to take home as explained in subparagraph "b" below. (Cal. Admin. Code, tit. 5, § 353.)

b. **After-School Departure on Bus**

A student who comes to and from school on a district bus *may* be required to stay after school to participate in school-sponsored activities until the departure of the assigned bus. (Cal. Admin. Code, tit. 5, § 307.)

c. **Noon or Recess Detention**

A student ***shall not*** be required to stay in school during noon lunch break or during any recess. (Cal. Admin. Code, tit. 5, § 352.) However, the governing board of a school district *may* adopt reasonable rules allowing a teacher to restrict his or her pupils' recess for disciplinary purposes. (Ed. Code, § 44807.5.)

2. **Suspension**

California laws often refer to several different ways a student can be removed from regular school attendance. The terms most often used are "suspension," "expulsion," "exclusion," and "exemption." While each action legally involves taking children out of or excusing them from attending school, each is very different in actual purpose and practice.

- ***Suspension***--short-term removal of a student from ongoing academic instruction for adjustment purposes. (Ed. Code, § 48925, subd. (d).) Removal from regular classes may take the form of in-school or out-of-school suspension.

- ***Expulsion***--long-term removal of a student from the immediate or general supervision and control of school personnel for disciplinary reasons. (Ed. Code, § 48925, subd. (b).) Removal generally requires the student to remain off the school grounds during the entire expulsion period.

- ***Exclusion***--excluding certain children from attending school such as those with "filthy or vicious habits," not having immunization or suffering from a contagious or infectious disease (Ed. Code, §§ 48211, 49451; Health & Saf. Code, § 3381; see also Health & Saf. Code, § 3118); children whose physical or mental disability would be detrimental to the welfare of other students (Ed. Code, § 48212).

- ***Exemption***--includes allowing a student to take a formal "leave of absence" from his or her compulsory education requirements for "supervised travel, study, training, or work not available to the student under another educational option" (Ed. Code,

§ 48416), and exempting the student from attending for various other reasons (Ed. Code, § 48220 et seq.). Exemption does not ordinarily relate to discipline.

For the purposes of this section, only methods to remove students for disciplinary reasons will be discussed--suspension and expulsion.

California's Education Code specifically states that suspension involves removing a student from "ongoing instruction for adjustment purposes," but such action does not involve any of the following:

- reassignment to another education program or class at the same school where the student receives one full day of continuous instruction;
- referral to certificated employee who advises students; or
- removal from class for the remainder of a class period without reassigning the student to another class or program. (Ed. Code, § 48925, subd. (d).)

After defining what does and does not comprise suspension, the statutes carefully outline a series of suspension procedures to be followed after a disciplinary infraction. Additionally, a series of laws have been written that deal with ***both*** suspension and expulsion procedures.

a. **Suspension or Expulsion: Notification to Law Enforcement of Assault With a Deadly Weapon by Student**

Before suspending or expelling a student, the principal or the principal's designee ***must*** notify the appropriate law enforcement authorities within the city or county in which the school is located of any acts of the student which may be considered an assault with a deadly weapon. (Ed. Code, § 48902.)

b. **Limits on the Days of Suspension**

The total number of days a student may be suspended from school ***shall not*** exceed 20 in any given school year. The following are exceptions:

- if a student enrolls in or is transferred to another regular school, opportunity school or class, or continuation education school or class for adjustment/disciplinary reasons, the total number of days suspended ***shall not*** exceed 30 in any given school year;
- if a student is suspended for the remainder of the semester from a continuation high school as allowed in Education Code section 48911, subdivision (g), when the

presence of the student would cause a danger to persons or property or a threat of disrupting the educational process. (Ed. Code, § 48903.)

c. Causes for Suspension

Suspension ***shall*** be used ***only*** after other correctional efforts do not result in the student's proper conduct. (Ed. Code, § 48900.5.) However, students ***may*** be suspended for a first offense if the principal or superintendent determines that the student's presence causes a danger to persons or property or threatens to disrupt the educational process. The principal or superintendent is specifically authorized to suspend for a first offense if the offense is:

- causing, attempting to cause, or threatening physical injury to any person;
- possessing, selling, furnishing any firearm, knife, explosive or dangerous object without permission from a certificated school official and the principal or his or her designee;
- unlawfully selling, possessing, using or furnishing any controlled substance (defined in Health & Saf. Code, § 11053 et seq.), alcoholic beverage, or intoxicant;
- unlawfully offering, arranging, or negotiating to sell any controlled substance, alcoholic beverage, or intoxicant, and then selling, delivering or furnishing another substance represented as above;
- committing robbery or extortion. (Ed. Code, §§ 48900, 48900.5.)

d. Grounds for Suspension and Expulsion

A student ***shall not*** be suspended or recommended for expulsion from school unless the principal or superintendent determines that he or she has committed one of the following acts:

(1) caused, attempted to cause, or threatened to cause physical injury to another person;

(2) possessed, sold, or furnished any firearm, knife, explosive or dangerous object without permission to do so from a certificated school employee, ***and*** the principal or the principal's designee. (A "principal's designee" is an administrator or certificated person specifically designated by the principal in writing to assist with disciplinary procedures. One or more persons may be designated for the school year and their names ***shall*** be on file in the principal's office (Ed. Code, § 48911, subd. (h)).

(3) unlawfully possessed, used, sold, furnished, or been under the influence of any controlled substance (defined in Health & Saf. Code, § 11053 et seq.) alcoholic beverage, or intoxicant;

(4) unlawfully offered, arranged, or negotiated to sell any controlled substance (defined in Health & Saf. Code, § 11053, et seq.), alcoholic beverage, or intoxicant and then sold, delivered or furnished to any person another substance represented as a controlled substance, alcoholic beverage, or intoxicant;

(5) committed robbery or extortion;

(6) caused or attempted to cause damage to school or private property;

(7) stolen or attempted to steal school or private property;

(8) possessed or used tobacco except in legallly designated smoking areas and as permitted by school board rules and regulations;

(9) committed an obscene act or engaged in habitual profanity or vulgarity;

(10) possessed, unlawfully offered, arranged, or negotiated to sell any drug paraphernalia (defined in Health & Saf. Code, § 11014.5; see also Health & Saf. Code, § 11364);

(11) disrupted school activities or willfully defied the authority of school employees performing their duties.

(12) Knowingly received stolen school property or private property. (Ed. Code, § 48900.)

A student *shall not* be suspended or expelled for these acts unless they relate to school attendance or school activities. A student *may* be suspended or expelled for these acts if they are related to school activity and occur:

. while on the school grounds;

. while going to or coming from school;

. during lunch period, whether on or off campus; or

. during, going to, or coming from a school-sponsored activity.

Alternatives to suspension or expulsion are to be imposed upon students who are truant, tardy or otherwise absent from school. (Ed. Code, § 48900; see Cal. Admin. Code, tit. 5, § 305.)

e. **Suspension by District's Governing Board**

The district's governing board *may* suspend a student from school for any act listed in Education Code section 48900. Suspension may be for any number of school days within the limits of Education Code section 48903, which provides for a maximum of 20 days total for any given year in most cases.

Unless requested to the contrary, the district's governing board's hearing concerning a suspension or other disciplinary action (except expulsion) *shall* be closed if such hearing would lead to giving out information that is prohibited from release by Education Code section 49073, which restricts or prohibits the release of directory information, such as name and address of students, in circumstances determined by the school district and parents.

Before calling a closed session, the district's governing board *must* send a written notification by registered or certified mail or personal service to the pupil and his or her parent or guardian about the board's intent to hold a closed session. The closed session *shall* be held unless the board receives a written request from the student or the student's parents or guardian for an open hearing within 48 hours after the student and his or her parent or guardian received the notification. If the board does receive a request for an open meeting, the session *shall* be open, but any discussion that may conflict with the student's right to privacy *shall* be held during closed session. (Ed. Code, §§ 48912, 49061, subd. (c), 49073.)

f. **Suspension From Continuation School or Class**

The district's governing board *may* suspend a student enrolled in a continuation school or class for no longer than to the end of the semester if he or she commits an act specified in Education Code section 48900 above. (Ed. Code, § 48912.5.)

g. **Suspension Procedures**

The principal, his or her designee, or the superintendent *may* suspend a student for no more than five consecutive school days if the student has committed an act listed in Education Code section 48900 or 48900.5, as discussed earlier. A student suspension *shall* be reported to the district's governing board or superintendent by a school employee.

Before suspending the student, the principal, his or her designee, or the superintendent *shall* hold an informal conference with the student and, when possible, with the school employee who referred the student for disciplinary

action. At the conference, the student ***shall*** be told the reason for suspension and the evidence against him or her, and ***shall*** have an opportunity to present his or her version and evidence in his or her defense. A student ***may*** be suspended without attending a conference only if the principal, his or her designee, or the superintendent determines an "emergency situation" exists--a situation that constitutes a clear and present danger to the lives, safety or health of students or school personnel. If a student is suspended without a conference, he or she and the parent or guardian ***shall*** be notified of the student's right to such a conference and the student's right to return to school for the conference. The conference ***shall*** be held within two school days unless the student waives this right or is physically unable to attend for any reason. In such a case, the conference ***shall*** be held as soon as the student is physically able to attend.

At the time of suspension, a school employee ***shall*** make a reasonable effort to contact the parent or guardian in person or by telephone. Within one school day of the suspension's beginning, a school employee ***shall*** mail a notice to the parent or guardian which ***shall*** be in their primary language whenever practicable, and which ***shall*** contain the following:

- facts leading to the suspension decision;
- date and time student will be allowed to return to school;
- statement of student's or parent's right, under Education Code section 48914, to request a meeting with the superintendent or his or her designee;
- statement of student's and parent's right, under Education Code section 49069, to have access to student's records;
- request that the parent or guardian attend the conference with the school officials regarding the student's behavior, including notice that state law requires an immediate response to such request.

The parent or guardian ***shall*** immediately respond to any request for a conference. The student ***may not*** be penalized for the parent's or guardian's failure to attend a conference, nor will his or her reinstatement be contingent upon the parent's or guardian's attendance.

When a student is suspended from continuation school for the rest of the semester and the case is being processed by the district's governing board, the superintendent or his or her designee ***may*** extend the suspension in writing until the board has made a decision. This extension ***may*** only be given

if the superintendent or his or her designee has invited the student and his or her parent or guardian to meet *and* determines that the student's presence at school or an alternative school would cause danger to persons or property or a threat of disrupting the educational process. If the student or his or her parents have requested a meeting to challenge the original suspension, the meeting for extending the suspension may be held at the same time as the meeting challenging the action. (Ed. Code, § 48911.)

h. **Suspension From Class by Teacher**

A teacher ***may*** suspend any student from his or her class for any act listed in Education Code section 48900 for the day of the suspension and the following day. The teacher ***shall*** immediately report such suspension to the principal and send the student to the principal or his or her designee for the appropriate action. If such action requires the student to remain on campus, he or she ***shall*** be supervised according to district regulations.

As soon as possible, the teacher ***shall*** ask the student's parent or guardian to attend a parent-teacher conference regarding the suspension. Whenever practicable, a school counselor or psychologist ***shall*** attend the conference. A school administrator ***shall*** attend the conference if the teacher or the parent or guardian so requests.

The student ***shall not*** return to the class from which he or she was suspended without agreement of the teacher and the principal. He or she ***shall not*** be placed in another regular class held during the same time as the class from which the student was suspended.

A teacher ***may*** also refer any student who commits an act listed in Education Code section 48900 to the principal or his or her designee to be considered for suspension from school. (Ed. Code, § 48910.)

i. **Make-Up Assignments During Suspension**

Any teacher who suspends a student from class ***may*** require the student to complete any assignments and tests missed during the suspension. (Ed. Code, § 48913.)

j. **Meeting With Superintendent Regarding Suspension**

If a student is suspended, he or she or the parent or guardian has the right to request a meeting with the superintendent or his or her designee. The meeting ***must*** be held within three school days after the request is received.

The superintendent or his or her designee ***shall*** determine if sufficient evidence existed to substantiate the alleged violation and if the penalty imposed was appropriate.

The student ***may*** designate a representative to attend the meeting with him or her. Counsel ***may*** be present to represent the student only if counsel is present to represent the district.

At the meeting, the superintendent or his or her designee ***must*** review all the written documents in the case. The student, his or her parents, and the representative ***may*** address the superintendent or his or her designee on the evidence and the penalty's appropriateness.

The superintendent or his or her designee ***must*** make a decision within two school days after the meeting. If the superintendent or the designee decides that no violation occurred, all records pertaining to the action ***must*** immediately be destroyed, and no information placed in the student's permanent record or file. If it is decided that the penalty imposed was inappropriate, all records ***must*** be revised to reflect that decision. (Ed. Code, § 48914.)

k. **Attendance Due to Suspension or Expulsion; Regulations**

The county board of education ***may*** establish the following regulations for reporting severance of attendance by all county schools:

- Any school which has severed the attendance of a student because of suspension beyond 10 school days, expulsion, exclusion, exemption, transfer, or any other reason, ***shall*** report such action to the county superintendent. The report ***shall*** include name, age, and last known address of the student, and the reason for severance.

- The county superintendent ***shall*** review all reports and make any recommendations for further examination by the county board of education and local district board in cases where the student's interests or the welfare of the state may need further examination.

- After preliminary investigation of those referred cases, the board ***may*** hold hearings and render final decisions on such cases. (Ed. Code, § 48202; see also §§ 48915-48920.)

l. **Reporting Severances of Attendance of Handicapped Students Due to Suspension or Expulsion**

Any private school and any county school district ***must*** report the severance, expulsion, suspension for more than 10 school days, exclusion, exemption, or transfer of any

student who is physically handicapped, mentally retarded, or multiply handicapped. The report *must* include the name, age, and last known address of the student, and the reason for such action.

The county superintendent *must* examine such reports and make any recommendations for further examination by the county board of education and local district board in cases where the student's interests or the welfare of the state may need further examination.

After preliminary investigation of those referred cases, the board *may* hold hearings and render final decisions on those cases. (Ed. Code, § 48203.)

3. Expulsion

Expulsion--removal of a student from the immediate or general supervision and control of school personnel (Ed. Code, § 48925, subd. (b))--is usually the last disciplinary resort for some students. It is a more serious action than suspension because it prohibits the student from returning to school (and sometimes the district) for periods ranging from several weeks to the remainder of the school year.

When reviewing these statutes, it is important to keep in mind the difference between suspending and expelling a student and the relative severity of the latter action. Clearly, expulsion is most often reserved for those students whose disciplinary and/or criminal infractions can no longer be tolerated by the school authorities.

a. Grounds for Expulsion

A student *shall not* be recommended for expulsion from school unless the principal or superintendent determines he or she has committed one of the following acts:

(1) caused, or attempted to cause, or threatened to cause physical injury to another person;

(2) possessed, sold, or furnished any firearm, knife, explosive or dangerous object without permission to do so from a certificated school employee *and* the principal or the principal's designee;

(3) unlawfully possessed, used, sold, furnished, or been under the influence of any controlled substance (defined in Health & Saf. Code, § 11053 et seq.), alcoholic beverage, or intoxicant;

(4) unlawfully offered, arranged, or negotiated to sell any controlled substance (defined in Health & Saf. Code, § 11053, et seq.), alcoholic beverage, or intoxicant and then sold, delivered or furnished to any person another substance represented as a controlled substance, alcoholic beverage, or intoxicant;

(5) committed robbery or extortion;

(6) caused or attempted to cause damage to school or private property;

(7) stolen or attempted to steal school or private property;

(8) possessed or used tobacco except in legally designated smoking areas and as permitted by school board rules and regulations;

(9) committed an obscene act or engaged in habitual profanity or vulgarity;

(10) possessed, unlawfully offered, arranged, or negotiated to sell any drug paraphernalia (defined in Health & Saf. Code, § 11014.5; see also Health & Saf. Code, § 11364);

(11) disrupted school activities or willfully defied the authority of school employees performing their duties.

(12) Knowingly received stolen school property or private property. (Ed. Code, § 48900.)

A student ***shall not*** be expelled for these acts unless they relate to school attendance or school activities. A student *may* be expelled for these acts if they are related to school activity and occur:

. while on the school grounds;

. while going to or coming from school;

. during lunch period, whether on or off campus; or

. during, going to, or coming from a school-sponsored activity.

Alternatives to suspension or expulsion shall be imposed upon students who are truant, tardy or otherwise absent from school. (Ed. Code, § 48900; see Cal. Admin. Code, tit. 5, § 305.)

b. **Pre-Expulsion Notification to Law Enforcement of Assault With Deadly Weapon by Student**

Before expelling any student, the principal or his or her designee *must* notify the appropriate law enforcement authorities within the city or county in which the school is

located of any acts of a student which may be deemed an assault with a deadly weapon (defined in Pen. Code, § 245). (Ed. Code, § 48902.)

c. **Duration of Expulsion and Readmission**

When the student is expelled, the district governing board ***must*** set a date not later than the last day of the semester following the semester in which the expulsion occurred when the student may apply for readmission.

The governing board ***may*** recommend a rehabilitation plan which may include, but is not limited to, periodic review, assessment upon student's application for readmission, counseling, employment, or community service.

The governing board ***shall*** adopt rules and regulations for readmission procedures. When the expulsion is ordered, the student and his or her parent or guardian ***shall*** be given a description of the readmission procedures. (Ed. Code, § 48916.)

d. **Expulsion by Board Action**

The principal or superintendent of schools ***must*** recommend a student's expulsion for any of the following acts:

- causing serious physical injury to another person, except in self-defense;
- possessing any firearm, knife, explosive or other dangerous object having no reasonable use to a student at school or at a school activity off school grounds;
- unlawfully selling any controlled substance, except for the sale of not more than one ounce of marijuana (other than concentrated cannabis);
- committed robbery or extortion.

The only exception may occur if the principal or superintendent finds and submits a written report to the district governing board that expulsion is inappropriate due to the particular circumstances.

Upon recommendation by the principal, superintendent of schools, hearing officer, or administrative panel, the district's governing board ***may*** expel a student if he or she committed any of the first five actions listed in Education Code section 48900.

Upon recommendation by the principal, superintendent of schools, hearing officer, or administrative panel, the governing board may expel a student for committing any of the last seven actions listed in Education Code section 48900, but only if the following is also found by the board:

- other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or
- due to the violation's nature, the student's presence causes a continuing danger to the physical safety of the student or others.

If a student with previously identified exceptional needs currently enrolled in a special education program is recommended for expulsion for alleged violations of Education Code section 48900 as discussed immediately above, such action ***must*** be based upon a determination by an individualized education program team that the misconduct was not caused by the student's identified handicap or inappropriate placement. Such a student ***may***, however, be expelled without a determination by an individualized education program team for a first offense for the following acts if the principal or superintendent determines:

- his or her presence causes a danger to persons or property; or
- threatens to disrupt the educational process;
- he or she caused, or attempted to cause, or threatened to cause physical injury to another person;
- he or she possessed, sold, or furnished any firearm, knife, explosive or dangerous object without permission to do so from a school official;
- he or she unlawfully possessed, used, sold, furnished, or was under the influence of any controlled substance, alcoholic beverage, or intoxicant;
- he or she unlawfully offered, arranged, or negotiated to sell any controlled substance, alcoholic beverage, or intoxicant and then sold, delivered or furnished to any person another substance represented as a controlled substance, alcoholic beverage, or intoxicant;
- he or she committed robbery or extortion. (Ed. Code, § 48915.)

e. **Rules and Regulations Governing Expulsion; Hearing; Notice; Findings; Order**

Each school district's governing board ***must*** establish procedures for expelling students which ***must*** include, but are not limited to, the following:

- The student ***shall*** be entitled to a hearing to determine if he or she should be expelled. Such hearing ***shall*** be held within 30 school days (40 school days if the board does not meet weekly) of the date the principal or superintendent determined that the student committed any act listed in Education Code section 48900. At the written request of the student, the hearing may be postponed, but for no more than 30 calendar days. The student is entitled to only one postponement; additional postponements are at the discretion of the district's governing board. If the governing board cannot conduct the hearing before the 30 or 40 school-day limit, the superintendent or his or her designee ***may*** extend, for good cause, the time period for an additional 5 school days. Reasons for the time extension ***shall*** be included in the expulsion hearing record. The hearing should be conducted and concluded without unnecessary delay.

- Written notice including the following ***shall*** be forwarded to the student at least 10 calendar days before the hearing:

  - date and place of the hearing;

  - statement of facts and charges for proposed expulsion;

  - copy of the district's disciplinary rules relating to the alleged violation;

  - opportunity for the student, or his or her parent or guardian to appear in person or hire legal counsel;

  - opportunity to inspect and obtain copies of all documents to be used at the hearing;

  - opportunity to confront and question all witnesses who testify at the hearing, to question all other presented evidence, and to present oral and documented evidence on the student's behalf, including witnesses.

- The governing board ***must*** conduct the hearing in a closed session, unless the student requests in writing five days prior to the hearing that it be held at a public meeting. Regardless of the closed or open nature of the hearing, the governing board ***may*** meet in closed session to determine whether the student should be expelled. If the board

allows any other person to attend the closed deliberations, then the student, counsel, parent or guardian ***shall*** also be allowed to attend.

- Instead of conducting an expulsion hearing, the board ***may*** contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California for a hearing officer to conduct the hearing. The board ***may*** also appoint an impartial administrative panel of three or more certificated persons, none of whom are board members or employed by the school in which the student is enrolled.

- A recommendation for or against expulsion ***must*** be made to the board within three school days following the hearing. If expulsion is not recommended, the proceedings ***must*** be terminated and the student immediately allowed to return to school, any other instruction or rehabilitation program, or a combination of programs. Such a determination is final.

- If expulsion is recommended, findings supporting the recommendation based only on evidence presented at the hearing ***must*** be prepared and submitted to the district's governing board. If the board accepts the recommendation, such acceptance ***must*** be based upon review of the facts and recommendations or upon the results of any supplementary hearing ordered by the board. It ***may*** be determined upon good cause that disclosing a witness' identity and testimony would subject the witness to an unreasonable risk of harm. In this case, the witness' testimony ***may*** be presented through sworn declarations examined only by the board, a hearing officer, or administrative panel. Copies ***must*** be edited to delete the name and identity of the witness and then ***must*** be made available to the student.

- A record of the hearing ***shall*** be made.

- Technical rules of evidence ***do not*** apply to the hearing. Relevant evidence may be admitted and considered only if it is of a nature allowing reasonable persons to rely upon it in the conduct of serious affairs. A decision to expel ***must*** be suported by substantial evidence showing the student committed the act(s).

- Final action to expel by the governing board ***must*** be in public session. Written notice of the decision to expel or suspend expulsion for a period of probation ***must*** be sent to the student or the student's parent or guardian along with notice of the right to appeal to the county board of education.

- The decision ***shall*** be made within 10 school days following the conclusion of the hearing, unless the student requests

in writing that the decision be postponed. If the hearing is conducted not by the board but by a hearing officer or panel, or if the board does not meet weekly, the board *shall* make its decision within 40 school days of the date the student was removed from school attendance unless the student requests in writing that the decision be postponed.

- The board *must* maintain a record of each expulsion and its cause; such record shall be a nonprivileged, disclosable public record. The expulsion order and causes *must* be recorded in the pupil's mandatory interim record and *must* be forwarded to any school in which the student subsequently enrolls upon request for that student's records. (Ed. Code, § 48918.)

f. Expulsion Extension Until Decision by District's Governing Board

When a student is being considered for expulsion from any school and the case is being processed by the district's governing board, the superintendent or his or her designee *may* extend the suspension in writing until the board has made a decision. This extension may only be given if the superintendent or his or her designee has invited the student and his or her parent or guardian to meet, and then determined that the student's presence at school or any alternative school would cause danger to persons or property or a threat of disrupting the educational process. (Ed. Code, § 48911, subd. (g).)

g. Appeal of Expulsion to County Board of Education

If a student is expelled from school following the action of the district governing board, he or she or the parent or guardian *may* file an appeal to the county board of education within 30 days after the decision. The student who receives a suspended expulsion *must* file an appeal within this 30-day period also to appeal the expulsion; the student cannot wait until the suspension of the expulsion is revoked before appealing the expulsion. The county board *must* hold a hearing and make a decision.

The county board *must* hold the hearing within 20 school days following the filing of the formal request. A decision *must* be made within three school days of the hearing unless the student requests a postponement.

The county board of education *shall* adopt rules and regulations establishing appeals procedures for expulsion that *shall* include, but are not limited to:

- requirements for filing a notice of appeal;

- setting a hearing date;
- giving the student and governing board notice of the appeal;
- furnishing a copy of the expulsion hearing record to the board;
- procedures for conducting the hearing; and
- preserving the record of the appeal.

The student ***must*** submit a request for a copy of the written transcript and supporting documents at the same time he or she files the notice of appeal with the board. The school district ***must*** provide the student with the requested information within five school days following the request. The student ***must*** immediately file suitable copies of such records with the board of education. (Ed. Code, § 48919.)

h. Hearing the Appeal by County Board of Education

The county board of education ***must*** hear an expulsion appeal in closed session, unless the student requests in writing, at least five days before the hearing, that it be conducted in a public meeting. If such a request is received in a timely manner, the board ***must*** honor the request. Whether the hearing is closed or open to the public, the board ***may*** meet in closed session to deliberate. If the board allows any representative of the student or school district to attend the closed deliberations, it ***shall*** also admit representatives from the opposing party. (Ed. Code, § 48920.)

i. County Board Determination of Appeal

The county board of education ***must*** make a decision about a student appeal based upon the record of the hearing before the district governing board as well as relevant documents or regulations. No evidence other than that contained in the school board's record of proceedings ***may*** be heard unless the county board decides to grant a new hearing based upon a finding that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded.

It is the student's responsibility to submit a written transcript for the county board's review. The student ***must*** pay for the transcript unless his or her parents affirm that they cannot reasonably afford the transcript costs. If the county board reverses the decision of a local board, the local board ***must*** reimburse the student for costs. (Ed. Code, § 48921.)

j. **Suspending an Expulsion Order**

The district's governing board ***may*** suspend the enforcement of an expulsion order for no more than one calendar year. As a condition of such suspension, the board ***may*** assign the student to a school, class, or program deemed appropriate for the student's rehabilitation. The student will be on probation during this suspended period. Such an order ***may*** be revoked by the board if the student commits any acts listed in Education Code section 48900 or violates any district rules and regulations. If suspension is revoked, the student ***may*** be expelled under the terms of the original expulsion order.

After a student satisfactorily completes a rehabilitation assignment, he or she ***must*** be reinstated in school. The governing board ***may*** also order the records of the expulsion proceedings to be destroyed.

Any decision to suspend an expulsion order ***does not*** affect the time period and requirements for filing an appeal. Any appeal shall be filed within 30 days of the governing board's original vote. (Ed. Code, § 48917.)

k. **Review of the Governing Board's Decision by the County Board of Education**

The county board of education's review of the governing board's decision is limited to the following questions:

- Did the governing board act without or beyond its jurisdiction? (For example, did the hearing occur within the specified time period? Was the expulsion order based upon the acts listed in Ed. Code, § 48900? Was the act related to nonschool activities?)

- Was a fair hearing held before the governing board?

- Did prejudicial abuse of discretion occur at the hearing? (For example, did school officials meet the procedural requirements for a hearing? Was the decision to expel supported by the findings in Ed. Code, § 48915? Were the findings supported by the evidence?)

- Was there relevant and material evidence which could not have been produced even with reasonable diligence or which was excluded improperly from the hearing?

A county board of education ***may not*** reverse the local board's decision to expel based upon a finding of abuse of discretion unless the county board also determines that the abuse was prejudicial. (Ed. Code, § 48922.)

1. **Limitations of County Board Decision**

County board of education decisions are limited to the following:

- The board finds relevant and material evidence exists that could not have been produced even through the exercise of reasonable diligence or was improperly excluded at the hearing. In this case, the board *may* either send the matter to the governing board for reconsideration and order the student reinstated pending such reconsideration, or grant a new hearing giving reasonable notice to the student and the governing board.

- In all other cases, the board *must* enter an order affirming or reversing the governing board's decision. If it is reversed, the county board *may* direct the local board to destroy the student's records regarding the expulsion proceedings and decision. (Ed. Code, § 48923.)

4. Exclusion

A student may be excluded from attending school if the school authorities determine that the continued presence of the student on school grounds would constitute a clear and present danger to the life, safety, or health of other students or school personnel.

In such case, the governing board of the school *shall* send notice of the exclusion to the parent or guardian of the child as soon as reasonably possible after the exclusion. (Ed. Code, § 48213.)

5. Corporal Punishment

Corporal punishment is our nation's oldest form of reprimanding both children and adults for a variety of infractions and misbehaviors. Inflicting physical punishment upon offending school children was the earliest and easiest way to assure conforming behavior in the first American schools. Today, corporal punishment still consists of the same measures--swatting or hitting children on the hands, legs, or buttocks with a paddle or hand. Such punishment ***must be reasonable and not overly harsh***.

While California law does not specifically define what actions comprise corporal punishment, it does allow its use, giving teachers and administrators rights to so punish children if the school has approval from the student's parent or guardian.

a. District Corporal Punishment Rules

The governing board of any school district *may* adopt rules and regulations authorizing teachers, principals and other certificated personnel to administer reasonable corporal or

other punishment to students when it is an appropriate corrective measure and written parental consent is obtained as required in Education Code section 49001. (Ed. Code, § 49000.)

b. **Corporal Punishment of a Student Requires Written Parental Consent**

No certificated personnel can administer corporal punishment without the prior written permission of the student's parent or guardian. Such approval is valid for the school year in which it was submitted but ***may*** be withdrawn at any time by the parent or guardian.

If a district adopts a corporal punishment policy, at the beginning of the first semester or quarter of the regular school year the governing board ***shall*** notify parents or guardians that such punishment ***shall not*** be administered without the prior written approval of the student's parent or guardian. (Ed. Code, § 49001.)

c. **Inflicting Cruel or Inhuman Corporal Punishment**

Any person who willfully inflicts any cruel or inhuman corporal punishment or injury resulting in a traumatic condition upon any child is guilty of a felony and, upon conviction, ***shall*** be punished by imprisonment in the state prison for two, four, or six years; or in the county jail not exceeding one year. (Pen. Code, § 273d.)

d. **Teacher Use of Physical Control Over a Student**

It is the duty of every public school teacher to hold students strictly accountable for their conduct to and from school, on playgrounds, or during recess. A certificated school district employee ***is not*** subject to criminal prosecution or penalties for using the same degree of physical control over a student that a parent would be legally permitted to use. Such control ***must*** be in conjunction with the employee's performance of his or her duties.

Such control ***must not*** exceed that which is necessary to maintain appropriate learning conditions, protect property, protect student health and safety, or maintain order. (Ed. Code, § 44807.)

6. **Opportunity Schools**

Any California school district ***may*** establish an opportunity school or program in any elementary or secondary school. (Ed. Code, § 48635.) An opportunity school is designed to provide an alternative educational opportunity for students "who are, or are in danger of becoming, habitually truant from instruction

upon which they are required to attend, or who are, or are in danger of becoming, irregular in attendance, or who are, or are in danger of becoming, insubordinate or disorderly during their attendance." (Ed. Code, § 48630.) Such a school strives to help students resolve their problems so they can return to regular classes in the regular school environment. A district may also establish an opportunity program, which has the same goal and serves students with the same types of problems, but operates for less than the full school day required of opportunity school or opportunity class students. (Ed. Code, § 48632.)

a. **Purpose of Assigning Student to Opportunity School, Class or Program**

The purpose of assigning any student to an opportunity school, class, or program is to improve the student and restore him or her to the regular school as soon as practicable. The district's governing board *may* give a diploma to any student who satisfactorily completes the course of study required by the school district in an opportunity school. (Ed. Code, § 48631.)

b. **Establishing Opportunity Schools**

Any district governing board or county board of education *may* establish schools or set apart public school buildings or rooms to serve as an opportunity school, class, or program. (Ed. Code, § 48633.)

c. **Rules for Opportunity School**

Any district governing board that establishes an opportunity school, class, or program *may* make special rules and regulations for its government that are not contrary to law. (Ed. Code, § 48634.)

d. **Students Assigned to Opportunity School**

Students in grades 1-12 may be assigned to opportunity school, class, or program by the city or county superintendent of schools or the city board of education. (Ed. Code, § 48636.)

The school district's governing board or its designee identified in writing or the district superintendent of schools *may* also assign students to an opportunity school, class or program. (Ed. Code, § 48637.)

e. **Notice of Assignment to Opportunity School to Parent or Guardian**

No student shall be required to attend an opportunity school, class, or program for adjustment purposes until the student and his or her parent or guardian have been so

notified in writing. Such notice ***must*** be in the parent's or guardian's primary language, so far as is practicable, and ***must*** request a response within 10 days. If no response is received, the person responsible for assigning the student ***must*** make a reasonable effort to contact the parent or guardian by telephone to communicate the information in the written notice. (Ed. Code, § 48637.1.)

f. Committee Recommendation Required for Assignment to Opportunity School

Students ***shall*** only be assigned to an opportunity school, class or program after the person making the assignment receives a recommendation from a school committee formed for that purpose. The committee ***shall*** include, but is not limited to, a district representative familiar with the student's progress; a representative of the opportunity school, class, or program; and the student's parent or guardian, at his or her option, or his or her designee. (Ed. Code, § 48637.2.)

g. Review of Progress of Opportunity School Student

Each district governing board and county board of education maintaining on opportunity school, class, or program ***must*** conduct a progress review for each student no less than two times each school year. The purpose of such review is to determine if the student would benefit by returning to regular school or classes. Review participants ***must*** include a representative of the opportunity school, class, or program who is familiar with the student's progress, and the student's parent or guardian, at his or her option. (Ed. Code, § 48637.3.)

h. Juvenile Court Supervision of Students Enrolled in Opportunity School, Class, Program

If any student assigned to an opportunity school, class or program is habitually truant, insubordinate or disorderly while in attendance, or demonstrates irregular attendance, the supervisor of attendance or other designee of the school board ***must*** refer the student to the county's school attendance review board (SARB). If the SARB determines that available community services cannot resolve the student's problem, it ***must*** direct the county superintendent of schools to request a petition on the student's behalf in the county juvenile court. If the court decides the allegations in the petition are sustained by the evidence, the court ***may*** render any appropriate judgment, including a requirement that the student's parent, guardian, or person in control of him or her ***shall*** deliver the student to the opportunity school, class, or program at the beginning of each school day for the remainder of the school year. (Ed. Code, § 48638.)

7. **Community Schools**

Any California county board of education ***may*** establish and maintain one or more community schools whose goal is to serve the following:

- students who have been expelled from a school while attending either continuation classes, opportunity classes, or alternative classes;
- students who have been referred to a community school by a district's school attendance review board (SARB);
- students who are probation-referred dependents or wards of the court, or who are on probation or parole and who are not attending any school. (Ed. Code, § 1981.)

Community schools, therefore, shoulder quite a responsibility by working with young people who are unable to adjust to the regular school environment, are habitually truant, or have been involved with the juvenile justice system.

a. **County Community School Programs; Assignment to Classes and Programs; Course of Study**

Students enrolled in county community schools ***must*** be assigned to classes or programs that will appropriately help their educational development. Such classes or programs ***may*** include, but are not limited to, basic educational skill development, on-the-job training, tutorial assistance, independent study, and individual guidance. Each student's educational program ***must*** be individually assessed and planned for his or her individual achievement.

The county board of education ***must*** adopt a course of study for a community school which ***must*** enable students to receive academic work leading to the completion of a high school program. (Ed. Code, § 1983.)

b. **Report to Legislature on Status of Community Schools**

The Superintendent of Public Instruction ***must*** submit a biannual status report to the Legislature relating to the operation of county community schools. Such reports are to be based on information furnished by the counties at the request of the Superintendent and consolidated by him or her. (Ed. Code, § 1985.)

8. **Student Records**

California laws require all school principals to keep on file an enrollment and scholarship record for each currently enrolled

student. (Cal. Admin. Code, tit. 5, § 430 et seq.) It further defines three types of records--two of which school districts are ***required*** to maintain, and an optional or "permitted" record.

- ***Mandatory Permanent Pupil Records***--records that indefinitely maintain all of the following information:

  - student's legal name, date of birth, method of verifying birthdate, place of birth, and sex;

  - name and address of parent of minor student, including the student's address if different from the parent, and an annual verification of parent name and address as well as student residence;

  - entering and leaving dates for each school year, any summer session, or other extra session;

  - subjects taken during each year, half-year, summer session, or quarter;

  - marks or credits (if given) toward graduation;

  - verification of or exemption from required immunization;

  - high school graduation or equivalent date.

  (Cal. Admin. Code, tit. 5, § 432, subd. (b)(1).)

- ***Mandatory Interim Pupil Records***--records that include the following information for a stipulated period of time:

  - log identifying persons or organizations requesting or receiving information from the student's record (the log is accessible only to the student, parent or legal guardian, or custodian of records);

  - health information;

  - participation in special education programs, including all actions necessary to establish admission or discharge eligibility;

  - language training records;

  - academic progress slips and copies of written academic reports sent home to parents;

  - parental restrictions regarding access to student information;

  - parent or adult student rejoinders to challenged records and to disciplinary actions;

- parental authorization or prohibition for pupil participation in specific programs;

- results of standardized tests administered within the preceding three years.

(Cal. Admin. Code, tit. 5, § 432, subd. (b)(2).)

Additionally, Education Code section 48918, subdivision (j) requires the school district's governing board to maintain a record of each expulsion and the cause for such action. All records *must* be nonprivileged, disclosable public records.

. ***Permitted Records***--records that districts *may* maintain for appropriate education purposes which *may* include:

- objective counselor and/or teacher ratings;

- standardized test results older than three years;

- routine discipline data;

- verified reports of relevant behavioral patterns;

- all disciplinary notices.

(Cal. Admin. Code, tit. 5, § 432, subd. (b)(3).)

Of the three types of records, only the "mandatory interim" and "permitted records" may include information dealing with any disciplinary actions or possible criminal actions committed by any student while attending school. Neither of these is permanent, thus allowing a student's negative disciplinary record to be erased after a specified period of time. The statutes discussed herein deal only with records showing disciplinary actions.

a. Disciplinary Information on Student Record; Parent's Right to File Response

If information concerning any disciplinary action taken by school district personnel is included in any student's record, the district *must* allow the student's parent to include a written statement or response to the disciplinary action in the student's record. (Ed. Code, § 49072.)

b. Conditions for Record Disclosure in Health and Safety Emergencies

An educational institution *may* disclose identifiable information from a student's record if necessary to protect the health or safety of the student or other individuals during an emergency. (Ed. Code, § 49076, subd. (b)(1).)

The following factors *must* be considered in determining whether or not to disclose such information:

- the seriousness of the threat to the health or safety of the student or other individuals;
- the need for such information to meet the emergency;
- whether the parties obtaining the information can actually deal with the emergency; and
- the extent to which time is of the essence in the emergency. (34 U.S.C.F.R. § 99.36.)*

c. Retention and Destruction of Pupil Records

After a student graduates from or permanently leaves high school, additions other than routine updating *shall not* be made to his or her record without prior consent of the parent or adult student.

Mandatory permanent pupil records *must* be kept in perpetuity. Mandatory interim pupil records *may* be destroyed when a student leaves the district or when they are no longer useful; destruction may occur after the third school year from which the record began. Permitted records *may* be destroyed after they are no longer useful, or six months after the student leaves or completes the educational program.

The destruction method *shall* insure that records cannot be inspected by the public while in the process of being destroyed. (Cal. Admin. Code, tit. 5, § 437.)

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*United States Code of Federal Regulations.

C. School Employee Disciplinary Procedures

In the early 1980s, school districts began to strengthen employee disciplinary procedures, as well as adopt new policies directed specifically at employees who engaged in unprofessional conduct or unlawful activity. Further, districts began to carefully evaluate the backgrounds of all applicants prior to actual employment. Most new procedures resulted from a flurry of recent legislation that had several goals:

- to exempt unqualified persons and those with criminal histories from employment in a California school district;
- to discipline employees who demonstrate unprofessional conduct;
- to suspend or dismiss employees involved in willful misconduct or illegal actions;
- to revoke the credentials of any person convicted of certain criminal actions or found to be unfit for employment in the public schools; and
- to invoke procedures for parents to make a complaint against the employee.

Such legislation falls into the two major categories discussed in this section: prehiring and credentialing procedures; and disciplinary procedures.

1. Pre-Hiring and Credentialing Procedures

Before any person can be issued a teaching credential or before a credential can be renewed, the State Commission on Teacher Credentialing is required by California law to examine each applicant. Since the early 1980s, such examinations require evidence of good moral character; proof that no moral, sexual, or controlled substance offense has been committed; and Federal Bureau of Investigation (FBI) clearance indicating that the applicant has no criminal history that would interfere with public teaching requirements and duties.

Further, before California school districts may hire a credentialed employee, they must request a criminal record summary from the California Department of Justice.

These recent statutory requirements, as well as the others summarized in this section, were designed to protect California school districts, their employees, and students from involvement with persons whose past records indicate they should not instruct or associate with minor students.

a. **Identification and Evidence of Good Moral Character Required of Applicants for Teaching Credentials**

The Commission on Teacher Credentialing is mandated to adopt, in addition to any other legally authorized law, regulations requiring every credential or credential renewal applicant to submit reasonable evidence of good moral character. These regulations ***must*** specify the following:

- an applicant ***may not*** be required to give information about any acts or omissions not related to his or her fitness to teach or perform other certificate-related duties, or which is related to his or her competence to perform the duties authorized by the credential; and

- the notice on the applicant's form which ***must*** include the following:

  - offenses requiring credential denial or revocation;

  - offenses for which the Commission can deny or revoke a credential, depending upon the degree of rehabilitation or requalification shown by applicant;

  - standards the Commission uses to decide whether to investigate offenses not clearly related to the applicant's fitness or competence to teach or perform other certificated services. (Ed. Code, § 44339.)

b. **Denial of Application**

The Commission for Teacher Preparation and Licensing ***may*** deny any application for credential or for credential renewal if an applicant falls under any of the following categories:

(1) lacks the qualifications required by law or regulations adopted by the Commission;

(2) is physically or mentally disabled in a way that would render the applicant unfit to perform the duties authorized by the credential sought (the mere fact of applicant's receipt of psychiatric treatment ***shall not*** be considered preliminary evidence of a mental disability and ***shall not*** provoke special scrutiny);

(3) is addicted to the use of intoxicating beverages in excess;

(4) is addicted to the use of controlled substances;

(5) has committed any act of moral turpitude;

(6) has had a certification document revoked;

(7) has intentially practiced fraud or deception in the application;

(8) fails or refuses to furnish reasonable evidence of good moral character;

(9) has been convicted of an indecent exposure offense (defined in Pen. Code, § 314) prior to September 7, 1955.

Any denial under subparagraphs (1) through (5) above ***must*** be based upon the applicant's fitness or competence to perform all certificate-related activities. (Ed. Code, § 44345.)

c. **Temporary Certificates**

Each county or city and county board of education and certain school districts ***may*** issue temporary certificates to authorize salary payments for certificated employees whose credential applications are being processed, and personnel employed in children's centers or other preschool educational programs, while their credential applications are being processed. However, the individual must do all of the following before being issued a temporary certificate:

- demonstrate proficiency in mathematics skills, basic reading and writing;
- make a statement under oath that he or she has filed a credential application; and
- make a statement under oath that, to the best of his or her knowledge, there is no reason why a certificate should not be issued.

Such a certificate is valid for not more than 120 school days. This period may be extended once for not more than 60 school days due to credential processing delays. Such an extension ***may not*** be granted if the Commission on Teacher Credentialing notifies the school district that the applicant does not possess adequate academic qualifications or has a criminal record disqualifying the application. (Ed. Code, § 44332.)

d. **Conversion of Temporary Certificate Into Regular Certificate**

A school district ***may*** require registration by any district employee of any document which authorizes the holder to serve in a position requiring certification qualifications.

If the required summary criminal history information is not available from the FBI, an applicant for an initial credential, certificate, or permit ***shall not*** be employed in a position requiring certification qualifications until he or she has met the following requirements for a temporary certificate of clearance:

- made full disclosure of all facts establishing his or her true identity;
- made a statement under penalty of perjury that he or she has not been convicted of a crime that would cause the denial of the credential, certificate or permit (an applicant ***may not*** be required to give information about any acts or omissions not related to his or her fitness to teach or perform other certificate-related duties, or related to his or her competence to perform the duties authorized by the credential); and
- paid the required fee (currently $12) to the Commission on Teacher Credentialing and fees for the FBI's summary criminal history.

A temporary certificate of clearance is converted into a regular certificate of clearance after the district receives a statement from the FBI that it has no summary criminal history information on the applicant or upon receipt of the summary criminal history and subsequent clearance by the Committee of Credentials. (Ed. Code, § 44332.5.)

e. Further Grounds for Denial

The Commission on Teacher Credentialing ***must*** deny any credential application or request for renewal if the applicant comes within any of the following classes:

- has been determined to be a sexual psychopath (as defined in former Welf. & Inst. Code, § 6300 et seq.; these statutes were repealed in 1981);
- has been convicted of a sex offense (defined in Ed. Code, § 44010);
- has been convicted of a controlled substance offense (defined in Ed. Code, § 44011).

An applicant ***may not*** be denied a credential solely because he or she has been convicted of a sex or controlled substance offense if the person has obtained an official certificate of rehabilitation (Pen. Code, § 4852.01 et seq.), if his or her probation has been terminated, and if the information or accusation has been dismissed pursuant to Penal Code section 1203.4.

The Commission *may* issue a credential to a person convicted of a controlled substance offense if it is determined that the person has been rehabilitated for at least five years, has received an official certificate of rehabilitation (Pen. Code, § 4852.01 et seq.), or the information or accusation has been dismissed pursuant to Penal Code section 1203.4. (Ed. Code, § 44346; see Ed. Code, § 45123.)

2. Disciplinary Procedures

There are two types of discipline to which a credentialed school employee is subject. First, there is discipline by the employing district which affects only the employee's particular job. Second, there is discipline against the credential, taken by the Commission on Teacher Credentialing, which affects the employee's general status and ability to teach. The forms of discipline, in general, include:

- ***Private Admonition***--a written warning from the Commission on Teacher Credentialing to the applicant or credential holder that concisely and clearly states his or her act or omission and warns that repeating such an act or omission may result in credential denial, suspension, or revocation. (Ed. Code, § 44438.)

- ***Suspension***--temporarily suspending a teaching credential or certificate, or an employee from his or her duties, while certain allegations are being considered by the school district or by the Commission.

- ***Dismissal***--permanently dismissing a certificated employee from district employment.

- ***Revocation of Credential***--taking away the credential of a public school employee so that he or she can no longer be employed by any school district.

These actions are explained in more detail in the following statutes:

a. Grounds for Dismissal of Permanent Employees

A permanent employee *may only* be dismissed for the following causes:

- immoral or unprofessional conduct;

- committing, aiding, or advocating the commission of criminal syndicalism;

- dishonesty;

- incompetency;

- evident unfitness for service;
- physical or mental condition unfitting someone who instructs or associates with children;
- persistently violating or refusing to obey state school laws, State Board of Education regulations or district regulations;
- conviction of a felony or any crime of moral turpitude;
- advocating or teaching communism (defined in Ed. Code, § 51530) with intent to indoctrinate any student, or advocating the overthrow of the government by force or violence to a totalitarian dictatorship based upon the principles of communism;
- knowing membership by the employee in the Communist Party;
- alcoholism or other drug abuse making the employee unfit to instruct or associate with children. (Ed. Code, § 44932; see also Ed. Code, § 51530.)

In a school district which does not have a collective bargaining agreement in effect, the district's governing board ***may*** suspend any permanent certificated employee without pay for a specific period of time on grounds of unprofessional conduct. The board ***may*** also suspend a probationary employee if the district has an average daily attendance of less than 250 students. (Ed. Code, § 44932; see also Ed. Code, § 51530.)

b. Other Grounds for Dismissal or Suspension

A permanent employee ***may*** be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those listed above (found in Ed. Code, § 44932). Any such charges ***must*** specify instances of the behavior deemed to constitute such unprofessional conduct. This section also applies to suspending probationary employees in a district with an average daily attendance of less than 250 students. (Ed. Code, § 44933.)

c. Sex Offenses and Controlled Substance Offenses; Compulsory Leave of Absence and Suspension of Credential

The district's governing board ***must*** immediately place upon compulsory leave of absence any certificated employee charged with the commission of any sex crime (as defined in Ed. Code, § 44010) by complaint, information or indictment in a court of law. The leave of absence ***may not*** exceed 10 days after the entry date of judgment. The employee's teaching or service credential is automatically suspended

for the same period of time. The district's governing board *may* extend the leave of absence by giving notice to the employee within 10 days after the entry date of judgment that he or she will be dismissed 30 days after the notice was served unless the employee demands a hearing.

Any employee placed on such compulsory leave of absence *must* continue to be paid his or her regular salary if he or she furnishes the school district with suitable security guaranteeing repayment of the salary received during the compulsory leave of absence if the employee is convicted of such charges, or does not return to service following acquittal or dismissal of the charges. If the employee is acquitted or the charges are dismissed, the district *must* reimburse him or her for the cost of security upon his or her return to the district's service.

If the employee does not furnish any security and he or she is acquitted or the charges are dismissed, the district *must* fully compensate him or her for the compulsory leave of absence upon return to the district's service.

The district's governing board *may* immediately place upon compulsory leave of absence any certificated employee charged with the commission of any controlled substance offense (as defined in Ed. Code, §§ 44011, 87011, and Health & Saf. Code, §§ 11357-11361 and 11363-11364)--except marijuana, mescaline, peyote or tetrahydrocannabinols--by complaint, information, or indictment in a court of law. The district *must* then follow the procedures required by this section as set forth above.

The district's governing board *must* immediately report any action taken pursuant to this section to the Commission on Teacher Credentialing. The Commission *must* give priority to the investigation and resolution of such cases. (Ed. Code, § 44940.)

d. Charges and Notice of Intention to Dismiss or Suspend

The district's governing board *may*, upon majority vote, give notice to a permanent employee who has received written notice of charges for dismissal or suspension as listed above in Education Code sections 44932 and 44933, of its intention to dismiss or suspend the employee 30 days after the notice is served, unless the employee demands a hearing. Suspension proceedings *may not* be initiated pursuant to this section if the governing board has adopted a collective bargaining agreement pursuant to Government Code section 3543.2, subdivision (b).

Any written statement charging unprofessional conduct or incompetency *must* specify instances of behavior and acts or omissions constituting the charge so the teacher will be able to prepare his or her defense. It *must*, where applicable, state the statutes and the rules the teacher allegedly violated, as well as the facts relevant to each occasion of alleged unprofessional conduct or incompetence.

This section also applies to suspending probationary employees in a district with an average daily attendance of less than 250 students which has not adopted a collective bargaining agreement pursuant to Government Code section 3543.2, subdivision (b). (Ed. Code, § 44934.)

e. Service of Notice and Attachments; Waiver of Hearing

The notice of any dismissal or suspension in a proceeding under Education Code section 44934 *may not* be given between May 15 and September 15 in any year. The notice *must* be written and served personally or by United States registered mail to the employee at his or her last known address. A copy of all filed charges and a copy of the provisions of the applicable statutes *must* be attached to the notice. If the employee does not demand a hearing in writing, he or she *may* be dismissed or suspended without pay for a specific period of time at the expiration of the 30-day period. (Ed. Code, §§ 44936-44937.)

f. Requirements Upon Governing Board on Dismissal for Certain Crimes

If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board *must* send to the State Board of Education and the county board of education which issued the certificate under which the employee was serving at the time of his or her dismissal a copy of the hearing transcript and a request that any certificate issued by the county school board to the employee be revoked if the employee is not reinstated upon appeal. (Ed. Code, § 44947.)

g. Private Admonition by Commission on Teacher Credentialing

Private admonition is a written warning to the applicant or credential holder that concisely and clearly states his or her act or omission and warns that repeating such an act or omission *may* result in credential denial, suspension, or revocation.

Such a private admonition *must* be included in the applicant's or credential holder's file which is maintained by the Commission. A copy *must* be forwarded to the

applicant's or credential holder's current employer who, in turn, *may not* make the copy accessible or disclose its contents unless the applicant or credential holder consents in writing.

If there is no recurrence of the offense, the Commission and the employer *must* destroy all private admonition records maintained in the applicant's or credential holder's files after three years. (Ed. Code, § 44438.)

h. **Immoral or Unprofessional Conduct; Revocation or Suspension by Commission**

The Commission on Teacher Credentialing *must* privately admonish, revoke, or suspend for the following reasons:

- immoral or unprofessional conduct;
- persistent defiance of and refusal to obey laws regulating duties of public school employees;
- any cause that would warrant denial of credential application or credential renewal;
- evident unfitness for service. (Ed. Code, § 44421.)

i. **Immoral or Unprofessional Conduct, Unfitness, Disobedience; Hearing by County Board of Education**

The Commission on Teacher Credentialing *may* require the county board of education employing any person with a credential issued by the Commission or the State Board of Education, who is charged with any of the actions listed above in Education Code section 44421, to give notice of, and conduct, a hearing of the charges for admonishment or for revocation or suspension of a certificate issued by the county board of education. Such action can only be taken after the Commission notifies the person charged of its intention to require such hearing by the county board. After the hearing, the county board of education *must* report to the Commission its findings and a summary of the evidence and make a definite recommendation concerning credential revocation or suspension. After receiving the report, the Commission *may* privately admonish the credential holder, suspend or revoke the credential, or order the charges dismissed. (Ed. Code, § 44422.)

j. **Conviction of Crime as Grounds for Revocation of Credential**

Any holder of a credential issued by the State Board of Education or the Commission on Teacher Credentialing who is convicted of a violation or an attempted violation of the following *must* have his or her credential revoked by the Commission (Ed. Code, § 44424):

Penal Code Section(s)	Offense
187-191	Murder
192	Voluntary Manslaughter
193	Voluntary/Involuntary Vehicular Manslaughter
203-204	Mayhem
207-210	Kidnaping
211-214	Robbery
217.1-219.3	Attempts to Kill
	Assault or Attempted Murder Upon Government Officers
	Train Wrecking
	Throwing Object at Common Carrier
	Throwing Object at Passenger or Freight Carrier
	Throwing Objects From Toll Bridge
220	Assault With Intent to Commit Mayhem or Specified Sex Offenses
222	Administering Drugs With Intent to Commit Felony
225-232	Dueling
244	Assault With Caustic Chemicals
245	Assault With a Deadly Weapon or by Force Likely to Produce Great Bodily Injury
	Rape
266	Procurement
266a	Procurement by Force or Fraud
266b	Compelling Illicit Relationship

Penal Code Section(s)	Offense
266d	Causing Cohabitation for Profit
266e	Acquiring Prostitute
266f	Selling Prostitute
266g	Procurement of Wife by Husband
266h	Pimping
266i	Pandering
267	Abduction of Minor for Prostitution
272	Contributing to Delinquency of Minor
273a	Cruelty to Child
273f	Sending Children to Immoral Place
273g	Immoral Practices or Habitual Drunkenness in Presence of Children
278	Child Abduction
285	Incest
286	Sodomy
286.5	Sexual Assault on Animal
288	Lewd or Lascivious Acts Involving Children
288a	Oral Copulation
424	Embezzlement and Falsification of Accounts
425	Officers Neglecting to Pay Over Public Money
*484	Theft
*484b	Diversion of Money for Construction of Improvements
*484c	Submission of False Voucher to Obtain Construction Loan
*484e	Credit Card Theft

*Revocation required only if the conviction is of a felony.

Penal Code Section(s)	Offense
*484f	Forgery of Credit Card or Signature
*484g	Fraudulent Use of Credit Card; Misrepresentation as to Identity of Cardholder
*484h	Credit Card Offenses by Retailer
*484i	Possession of Incomplete Credit Card or Counterfeiting Machinery
*484j	Publication of Credit Card Number or Code to Enable Avoidance of Lawful Charge
*485	Appropriation of Lost Property by Finder
*487a	Stealing Livestock Carcas
*487b	Conversion of Real Estate Into Personal Property
*487d	Theft of Gold Dust, Amalgam or Quicksilver
*487e	Dog Stealing
*487g	Stealing Dog for Sale, Medical Research or Commercial Use
503	Embezzlement
504	Embezzlement by Officer of Public or Private Corporation, Association or Society

k. Conviction of Sex or Controlled Substance Offense as Grounds for Revocation by Commission

The Commission on Teacher Credentialing *must* suspend the credential of anyone convicted of any sex offense defined in Education Code section 44010 or controlled substance offense defined in Education Code section 44011. If the credential holder's conviction is reversed, he or she is acquitted in a new trial, or the charges are dismissed, the Commission *must* terminate the credential suspension. When the conviction becomes final or imposition of sentence is suspended, the Commission *must* revoke the credential. (Ed. Code, § 44425.)

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*Revocation required only if the conviction is of a felony.

l. **Conviction of Sex Offense or Controlled Substance Offense as Grounds for Revocation and Suspension by County Board**

The county board of education ***must*** suspend a certificate issued by the board of anyone convicted of any sex offense defined in Education Code section 44010 or controlled substance offense defined in Education Code section 44011 on the same terms as those set forth in subparagraph "k" above. (Ed. Code, § 44436.)

m. **Procedures for Parental Complaint Against a School Employee**

Each school governing board ***shall*** adopt policies and procedures whereby parents or guardians of students enrolled in the district ***may*** present complaints regarding district employees. Such policies and procedures ***shall*** provide appropriate mechanisms to respond and, where possible, resolve any complaints. (Ed. Code, § 35160.5, subd. (c).)

D. Liability

When persons are injured or property is damaged on public school grounds, liability questions inevitably arise. Who is responsible for allowing the crime to occur? Could it have been prevented and, if so, why weren't the proper steps taken? Did negligence contribute to the criminal occurrence? Who will pay any resulting civil and/or criminal damages? Can a parent or guardian be liable for the criminal or negligent actions of his or her child? Can a school district be held responsible for failing to prevent a crime?

Fortunately, the California Legislature began addressing such questions over a decade ago. Its purpose in designing liability legislation was twofold--to protect the educational community from unwarranted and wrongful civil and criminal actions, and to assure that the persons or entities responsible for illegal actions were held legally liable for criminal damages and injury. This section interprets these laws which affect four particular parties usually held responsible for school crime: the school district, school employees, the parent or guardian of a student, and the student.

1. District Liability

California school districts are responsible for insuring themselves against a variety of liability losses. The obvious goal is protection--the need to protect the district and its employees from wrongful civil and criminal actions. The Education, Government, and Vehicle Codes provide a series of statutes that exempt districts from certain types of liability, but specifically target districts for liability in specific circumstances where negligence contributed to damages or injuries to persons and/or property.

a. Responsibility of District Governing Board on Liability Issues

A school district's governing board ***must*** insure against:

- district liability for damages for death, injury to person, or damage or loss of property; and
- personal liability of board members and district employees for death, injury to person, or damage or loss of property caused by a board member's or employee's negligence or omission when acting within the scope of his or her office or employment.

Such insurance **may** be written by any insurance company authorized to transact insurance business in the state, or by a nonadmitted insurer if such insurance cannot be procured from a majority of the insurers admitted for the particular class or classes of insurance (see Ins. Code, § 1763). (Ed. Code, § 35208.) A school district **may** also

insure itself against liability of the district, its officers, agents or employees, through use of its own funds or partly from its own funds and partly by means of insurance written by an insurance company. (Ed. Code, § 35214.)

b. **District, School Board, Superintendent Liability for Pupils Not on School Property**

A school district, board of education, or officer or employee of the district or board *is not* liable for the conduct or safety of any public school student at any time when he or she is not on school property. The only exceptions are when the district, board, or person provides transportation for students to and from school; is involved in a school-sponsored activity off campus; has otherwise specifically assumed such liability; or fails to exercise reasonable care under the circumstances.

If the district, board, or person specifically assumes one of the above actions, it is liable for the conduct or safety of any student only when such student is under the immediate and direct supervision of a district or board employee. (Ed. Code, § 44808.)

c. **School District and Employee Liability for Students Who Leave School Grounds During Lunch Period**

A district's governing board *may* allow high school students to leave school grounds during lunch period. If students leave the school grounds during such a lunch period, the district and its officers or employees *are not* liable for the student's conduct or safety.

If the district's governing board passes such a policy, it *must* send the following notice home to parents and guardians:

> "The governing board of the _____ School District, pursuant to Section 44808.5 of the Education Code, has decided to permit the pupils enrolled at _____ High School to leave the school grounds during the lunch period. Section 44808.5 further states: 'Neither the school district nor any officer or employee thereof shall be liable for the conduct or safety of any pupil during such time as the pupil has left the school grounds pursuant to this section.'" (Ed. Code, § 44808.5.)

d. **School District Liability for Injuries or Damages Caused by Loaned Equipment**

A person, corporation, firm, public entity, or employee thereof who gratuitously loans any type of equipment or employee services to a school district *is not* liable, but

the school district *is* liable for the following: damages for personal injuries or death to any person, or property damage resulting from the operation of such equipment or an act or omission of an employee while the equipment is under the supervision or control of the district.

This provision does not apply if such equipment is mechanically defective or if the employee whose services are provided is not fully qualified to provide the services. (Ed. Code, § 32350.)

e. Liability of Public Entity for Death or Injury to Person or Property Due to Negligence in Operating a Motor Vehicle

A public entity *is* liable for death or injury to person or property caused by a negligent or wrongful act or ommision in the operation of a motor vehicle by an employee of the public entity acting within the scope of his or her employment. (Veh. Code, § 17001.)

2. School Employee Liability

School district employees and board of education officials are protected from certain civil and criminal prosecution and penalties which are carefully explained in the California statutes. While such laws protect district employees and officials from some legal entanglements, they do not exempt employees or officials who act negligently or wrongfully while performing their school-related duties.

a. Liability for Treatment of a Child

A school district, district officer, principal, physician or hospital treating any child enrolled in any district *is not* liable for reasonably treating a child without the consent of the child's parent or guardian when the parent or guardian cannot be reached if the child is ill, injured during regular school hours, or requires reasonable medical care. The only exception is where the parent or guardian has previously filed with the district a written objection to any medical treatment other than first aid. (Ed. Code, § 49407.)

b. Liability for Mental Examination of a Student

The district's governing board *may*, upon a principal's report that a student's mental condition indicates the need for a mental examination, provide for such an examination with the written consent of the student's parent or guardian.

The principal *is not* liable for damages or any civil or criminal penalty for any such report made in good faith. (Ed. Code, § 49440.)

c. **Employee Liability for Use of Records of Persons Convicted of Controlled Substance Offense During Instruction**

A school board or district employee *is not* liable for any damage or injury to any person resulting from the publication of any reports, records, prints, or photographs of or concerning any person convicted for violating a law prohibiting the use, sale or possession of controlled substances, when the publication is used in instruction about such substances or for the purpose of general education. The name of any person in such materials *must* be kept confidential and every reasonable effort *must* be made to keep any identifying information confidential. (Gov. Code, § 818.7.)

d. **School Counselor Liability for Confidential Information**

Students 12 years of age and older, as well as any parent or guardian, who confide in a school counselor are entitled to confidentiality. Such information will not become part of the student's written record without the written consent of the student. Exceptions to the confidentiality rule are as follows:

- discussion with psychotherapists (see Evid. Code, § 1010), other health care providers, or the school nurse for the purpose of referring the student for treatment;
- reports of child abuse or neglect (required by Pen. Code, § 11166);
- reports made to the principal or to student's parents when the school counselor has reasonable cause to believe disclosure is necessary to avert a clear and present danger to the health, safety or welfare of the student, administrators, teachers, school staff, parents, students and other members in the school community;
- reports made to the principal, the student's parents, and other appropriate persons inside and outside the school when a student has indicated that a crime likely to cause personal injury or significant or substantial property loss will be or has been committed;
- reports made to specified person(s) in a written waiver of confidence which is read and signed by the student and kept in his or her file.

Further, if the school counselor decides that any information that may be revealed to a parent or guardian would endanger the health, safety, or welfare of the student, he or she *may not* disclose such information.

The only time confidentiality may be broken--other than the five instances cited above--is when a law enforcement agency has a court order to obtain such information, or when the school counselor is ordered to testify in an administrative or judicial proceeding.

No person required to keep any such information discussed during counseling confidential can be held civilly or criminally liable. (Ed. Code, § 35301.)

e. Teacher Use of Physical Control Over a Student

Every public school teacher ***must*** hold students strictly accountable for their conduct to and from school, on playgrounds, or during recess. Any certified school district employee ***shall not*** be subject to criminal prosecution or penalties for using the same degree of physical control over a student that a parent would be legally permitted to use. Such control must be in conjunction with the employee's performance of his or her duties.

In no instance shall such control exceed that which is necessary to maintain appropriate learning conditions, protect property, protect student health and safety, or maintain order. (Ed. Code, § 44807.)

3. Parent and Guardian Liability

Over the past decade, the California Legislature passed several laws and strengthened previous statutes that make parents or guardians liable for a minor whose misconduct results in injury or death to persons as well as damage or injury to property. The statutory emphasis is one of accountability--the person legally in control or charge of a minor must be held accountable for his or her actions. In some cases, the laws provide for joint liability shared between the minor and his or her parent or guardian.

a. Parental Liability for Minor's Conduct

A parent or guardian of any minor whose willful misconduct results in injury or death to any student or any person employed by or voluntarily working for a school district or private school or who willfully injures any school district or private school property or property of any school employee is liable for all damages caused by the minor as follows:

- liability for damages not exceeding $7,500;
- liability for any reward paid pursuant to Government Code section 53069.5 not exceeding $7,500; and

. liability for all property belonging to the school district or private school loaned to the minor and not returned upon demand.

The State Superintendent of Public Instruction ***must*** compute an adjustment of the above liability limits at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States as published by the United States Department of Commerce for the prior fiscal year.

Any school district or private school ***may*** withhold the grades, diploma, and transcripts of any student who has willfully injured school property or has willfully not returned school property upon employee demand. The grades, diploma or transcripts ***must*** be given to the pupil after his or her parent or guardian has paid for the damages.

Before withholding such grades, diploma or transcripts, the school district ***must***:

. inform the student of due process rights; and

. inform the parent or guardian in writing of the student's alleged misconduct.

If the minor and parent cannot pay for damages or return the property, the school ***must*** provide a voluntary work program for the minor in lieu of payment. After such work is completed, the grades, diploma, and/or transcripts ***must*** be released.

Each district's governing board ***must*** establish procedures to implement this law. (Ed. Code, § 48904.)

b. Parental Liability for Student Nonattendance

It is unlawful for any parent, guardian or other person in charge of any student to fail to comply with the Compulsory Education Law (Ed. Code, § 48200 et seq.) unless they are excused from such action. Such an act is punishable by the following:

. First conviction--fine not exceeding $100.

. Second or subsequent conviction--fine not exceeding $200.

. In lieu of such fines, the court ***may*** order the parent or guardian to be placed in a parent education and counseling program.

If the parent or guardian is ordered to pay a fine, the court *may* allow the payment to be made in installments. However, the court ***must*** order that if the defendant fails to pay the fine or any installment on the due date, or fails to attend the prescribed program on a prescribed date, he or she *shall* appear in court for further proceedings. Willful violation of the order to appear in court is punishable as contempt. (Ed. Code, § 48293.)

c. Parental Liability for Student's Willful Misconduct

The parent or guardian having custody and control of any minor whose willful misconduct results in injury or death to another person or injury to property of another is jointly and individually responsible with the minor for any damages as follows:

- liability for damages not exceeding $10,000 for each civil offense (tort) committed by the minor; and
- in the case of injury to a person, liability not exceeding $10,000 for medical, dental, and hospital expenses suffered by an injured person.

Such liability is in addition to any liability currently imposed by law.

The parent or guardian having custody and control of any minor whose willful misconduct results in the defacement of another's property with paint or a similar substance is jointly and individually liable with the minor for any damages as follows:

- damages, including court costs and attorney's fees to the party winning the suit, not exceeding $10,000 for each civil offense (tort) committed by the minor. (Civ. Code, § 1714.1.)

d. Parental Civil Liability for Person or Property Injured

The parent or guardian having custody or control of any minor under 18 years old who discharges a firearm and consequently injures a person or property *shall* be jointly and individually liable with the minor for any resulting damages *if* the parent or guardian permitted the minor to have the firearm or left it in a place accessible to the minor.

Such liability is in addition to any liability currently imposed by law. However, the limit of this responsibility is for $15,000 for injury to or death of one person resulting from any one occurrence; and for $30,000 for injury to or death of all persons resulting from any one occurrence. (Civ. Code, § 1714.3.)

e. **Legal Action by School District for Willful Injury to Employee**

A school district employee whose person or property is damaged or injured by a student's willful misconduct may request the district to pursue legal action pursuant to Education Code section 48904 against the student or his or her parent or legal guardian *if* the employee or his or her property is:

- located on district-owned property;
- being transported to or from a school or district-sponsored activity;
- present at a school or district-sponsored activity; or
- injured or damaged in retaliation against acts lawfully undertaken by the employee in performing his or her duties. (Ed. Code, § 48905.)

f. **Parental Liability for Reward Offered to Apprehend a Minor**

A local agency may offer and pay a reward for information leading to the identifying and apprehending of any person whose willful misconduct results in injury or death to any person or property damage or destruction.

Any person whose willful misconduct results in injury or death of any student or person employed by or performing voluntary services for a local agency is liable for the amount of any reward paid; if he or she is an unemancipated minor, the parent or guardian is also liable for the amount.

Any person whose willful misconduct results in damage or destruction of property of a local agency, or state or federal agency, is liable for the amount of any reward paid; if he or she is an unemancipated minor, the parent or guardian is also liable for the amount. (Gov. Code, § 53069.5.)

g. **Parent Liability for Unlawful Injury to Public Exhibit**

It is unlawful to maliciously cut, tear, deface, break or injure any book, map, chart, picture, engraving, statue, coin, model, apparatus, or work of literature, art, mechanics, or object of curiosity deposited in a public library, museum, collection, fair, or exhibit. Such an act is a misdemeanor.

The parent or guardian of a minor who willfully and maliciously commits such an act is liable for all damages caused by the minor. (Ed. Code, § 19910.)

h. **Parent Liability for Willful Detention of Public Materials**

It is unlawful to willfully keep any book, newspaper, magazine, pamphlet, manuscript or any property belonging to any public or incorporated library, reading room, museum, or other educational institution 30 days after written notice to return the property. Such an act is a misdemeanor.

The parent or guardian of a minor who willfully and maliciously commits such an act is liable for all damages caused by the minor. (Ed. Code, § 19911.)

i. **Parental Responsibility for Delivering Student to School**

A court *may* render judgment that the parent, guardian or person in charge of the student *shall* deliver him or her at the beginning of each school day through the remainder of the school term to the school from which he or she has been truant, or in which he or she has been insubordinate or disorderly.

The court may also direct the parent to deliver him or her to a school designated by school authorities. (Ed. Code, § 48268.)

4. **Student Liability**

While the state expects every person to be legally responsible for his or her actions, it also recognizes that some people are incapable of such responsibility or are unable to pay civil penalties due to their age or mental or physical condition. Consequently, most statutes emphasize the civil liability of a minor, but hold the parent or guardian, or the pupil *and* his or her parent or guardian, liable for any damages resulting from the minor's misconduct.

a. **Minor's Liability for Wrongs, But Not Exemplary Damages**

A minor, or person of unsound mind, is civilly liable for any wrong done. Such a person is not liable for exemplary damages unless at the time of the act he or she was capable of knowing it was wrongful. (Civ. Code, § 41.)

b. **Minor's Rights in Civil Action**

A minor *may* enforce his or her rights by civil action or other legal proceeding in the same manner as an adult. However, a guardian *must* conduct such proceedings on behalf of the minor. (Civ. Code, § 42.)